

COUNCIL MEETING

JANUARY 14, 2015

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, January 14, 2015 at 9:13 a.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i (*excused at 11:16 a.m.*)
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Kagawa moved for approval of the agenda as circulated, seconded by Councilmember Kuali'i, and unanimously carried.

MINUTES of the following meetings of the Council:

November 5, 2014 Council Meeting
November 5, 2014 Public Hearing re: Bill No. 2561
November 19, 2014 Council Meeting
December 1, 2014 Inaugural Meeting
December 10, 2014 Special Council Meeting
December 10, 2014 Public Hearing re: Bill No. 2545 and Bill No. 2565
December 17, 2014 Special Council Meeting
December 17, 2014 Public Hearing re: Bill No. 2563 and Bill No. 2564

Councilmember Kagawa moved to approve the Minutes as circulated, seconded by Councilmember Kuali'i.

Council Chair Rapozo: Any discussion? Councilmember Yukimura.

Councilmember Yukimura: I am still working on the minutes of the Inaugural Meeting, which are fifty (50) pages, single-spaced, and have spoken to our Deputy County Clerk, so we will be working on it and I would like to request one more deferral. May I ask that it be taken separately from our vote on the other minutes?

Council Chair Rapozo: No problem. Mr. Kagawa, would you have any objection from removing the December 1, 2014 Inaugural Meeting from your motion?

Councilmember Kagawa moved to approve all Minutes as circulated, except for the Minutes of the December 1, 2014 Inaugural Meeting, seconded by Councilmember Kuali'i, and unanimously carried.

Councilmember Yukimura moved to defer the Minutes of the December 1, 2014 Inaugural Meeting, seconded by Councilmember Kagawa, and unanimously carried.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Clerk, may we go to the next item, please?

CONSENT CALENDAR:

C 2015-27 Communication (12/10/2014) from the Director of Finance, transmitting for Council information, the Schedule of Fund Balances for the Fiscal Year Ended June 30, 2014, pursuant to Section 19.14 of the Charter of the County of Kaua'i.

C 2015-28 Communication (12/11/2014) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-781, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, by revising the amounts estimated in the General Fund, Highway Fund, Solid Waste Fund, Sewer Fund, and Golf Fund to meet the full Annual Required Contribution for Other Post Employment Benefits (OPEB) as prescribed by the most recent actuarial report. (*Full Funding of OPEB Annual Required Contribution (ARC) - \$1,495,385*)

C 2015-29 Communication (12/12/2014) from the Director of Planning, transmitting the Planning Commission's recommendation to amend Chapter 10, Article 5, Kaua'i County Code 1987, as amended, to adopt the Lihue Community Plan Update, which sets forth policies and recommendations for each of the three (3) major communities in the Lihue District (Lihue, Puhi, and Hanamā'ulu), as well as identifying potential special planning areas for the Lihue District.

C 2015-30 Communication (12/19/2014) from the County Attorney, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-781, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, by revising the amounts estimated in the General Fund to fund the anticipated Special Counsel budget shortfall for the remainder of Fiscal Year 2014-2015. (*Office of the County Attorney, Special Counsel Account - \$650,000*)

C 2015-31 Communication (12/22/2014) from Councilmember Yukimura, providing written disclosure of a possible conflict of interest and recusal, with regard to Bill No. 2569, relating to electric vehicle charging stations, as she is currently an owner of an electric vehicle and utilizes these charging stations for her personal vehicle.

C 2015-32 Communication (12/29/2014) from the Director of Finance, transmitting for Council information, the Condition of the County Treasury Statement quarterly report as of November 13, 2014.

C 2015-33 Communication (12/30/2014) from Council Chair Rapozo, transmitting for Council consideration, a Resolution amending Resolution No. 2014-39, to amend the expiration date of Mary E. Tudela's term on the Board of Ethics.

C 2015-34 Communication (12/30/2014) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral reappointments to the various Boards and Commissions for the County of Kaua'i:

1. Building Board of Appeals
 - Michael Y. Nagano – Term ending 12/31/2017
2. Board of Ethics
 - Mary E. Tudela – Term ending 12/31/2017
 - Calvin K. Murashige – Term ending 12/31/2017
3. Board of Review
 - Russell S. Kyono – Term ending 12/31/2017
4. Civil Service Commission
 - Richard J. Jose – Term ending 12/31/2017
5. Fire Commission
 - Harold D. Brown – Term ending 12/31/2017
6. Police Commission
 - Donald K. Okami, Sr. – Term ending 12/31/2017
7. Salary Commission
 - Charles G. King – Term ending 12/31/2017
 - Camilla C. Matsumoto – Term ending 12/31/2017

C 2015-35 Communication (12/30/2014) from Councilmember Hooser, transmitting for Council consideration, a proposed draft Bill relating to declaring a public nuisance to protect health, safety, and property from the effects of various types of air pollution.

C 2015-36 Communication (01/07/2015) from Councilmember Hooser, transmitting for Council consideration, proposed amendments to Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Taxes (RPT), to freeze RPT for the 2015 tax year at 2014 tax year amounts or less, for properties with home use exemptions that received substantial increases in their RPT bills in the 2014 tax year due to the removal of the Permanent Home Use exemption, any changes in use, increases in various RPT rates, and recalculation of their property taxes based on current fair market values. (*Real Property Tax Relief for the 2015 Tax Year*)

C 2015-37 Communication (01/07/2015) from Council Chair Rapozo, providing written disclosure of a possible conflict of interest and recusal, regarding Salary Commission Resolution No. 2014-1, relating to the salaries of certain officers and employees of the County of Kaua'i, as his brother is one of the officers or employees who may benefit from the proposed salary increase.

Councilmember Kagawa moved to receive C 2015-27, C 2015-28, C 2015-29, C 2015-30, C 2015-31, C 2015-32, C 2015-33, C 2015-34, C 2015-35, C 2015-36, and C 2015-37 for the record, seconded by Councilmember Kualii.

Councilmember Yukimura: Mr. Chair, may I ask that C 2015-35 be excluded from the motion because I understand that there are people who want to speak on the matter?

Council Chair Rapozo: Okay. Was it you who made the motion, Councilmember Kagawa?

Councilmember Kagawa: I guess my question would be would the bill on first reading not be the appropriate time to speak?

Council Chair Rapozo: It would be, but today I have been informed that we have some parents who have taken their kids out of school, as well as someone who has to go back home to take care of a sick pet or something.

Councilmember Kagawa: In response, could we take "Bills for First Reading" first?

Council Chair Rapozo: I would rather not because I am not sure—I had responded to some people that called yesterday about when it was going to show up and I said that it will not be up before lunch, so I am kind of concerned that they may have set their day as well.

Councilmember Kagawa: Understood.

Council Chair Rapozo: I do want to accommodate the people that are here that cannot stay, so this would be the appropriate time.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: May I get the amended motion for the Consent Calendar items?

Councilmember Kagawa moved to receive C 2015-27, C 2015-28, C 2015-29, C 2015-30, C 2015-31, C 2015-32, C 2015-33, C 2015-34, C 2015-36, and C 2015-37 for the record, seconded by Councilmember Kualii, and unanimously carried.

Councilmember Yukimura moved to remove C 2015-35 off of the Consent Calendar, seconded by Councilmember Kualii, and unanimously carried.

C 2015-35 Communication (12/30/2014) from Councilmember Hooser, transmitting for Council consideration, a proposed draft Bill relating to declaring a public nuisance to protect health, safety, and property from the effects of various types of air pollution.

Council Chair Rapozo: With that, I would ask that Councilmembers refrain from making comments on this until the Bill, that we would use this opportunity to accept the public testimony and ask questions of the public. That is my request. Are there any registered public speakers?

RICKY WATANABE, County Clerk: Yes we have. We have Annie Leighton, followed by Lori Abbey-MacDonald.

Council Chair Rapozo: Thank you. If there are no objections, the rules are suspended. Annie, this is your first time here, so there is a "lighted Christmas tree" in front of you that will let you know your time. When the orange light goes on, you have thirty (30) seconds remaining.

There being no objections, the rules were suspended.

ANNIE LEIGHTON: Wow. Good morning, Councilmembers. My name is Annie Leighton. I reside in Wailua Homesteads. First, I want to say that I grew up in plantations. My great-grandfather, grandfather, and my father all worked on the plantation. I grew up breathing cane-burning smoke, which is probably why my allergies get pretty bad. I want to speak to this issue of smoke producing fireplaces in residential neighborhoods. We obviously live in a different time and place now than we did twenty (20), thirty (30), and forty (40) years ago when there were only twenty thousand (20,000) people on the island. We are dealing with a more urbanized lifestyle. I was always raised with a notion that my rights stop where somebody else's rights begin. I am a libertarian at heart. I would prefer to see no government, but unfortunately, people are not compassionate enough to live sanely under that system, so we do have to have a government. Our government is here to protect our rights. I have a right to fresh air in my home, yard, and environment. I had this conversation with people that I used to work with who would smoke, and I finally told them, "If you want to smoke, you go outside." "We do not have to do that." I said, "Yes, you do because you are putting something into my environment that was not there." On Kaua'i, we have a law that pretty much bans outside burning. I will not say that it has completely eliminated it; I will say that it has greatly reduced it. There are people up in my area who still burn. I do not think it is unreasonable to put, though I hate to say it, another law on the books that kind of piggybacks on the whole spirit of that burning. I am impacted by a neighbor with whom I thought we had an agreement. That neighbor has decided to go back on that agreement. His comment was, "My friends and neighbors on the mainland hated me because I would smoke them out all of the time." Well, what makes us any different? Is our sense of "*aloha* spirit" just supposed to take that? When I get headaches and I cannot breathe, and I contact him, his response is pretty much, "So what? If you do not like it, then move." Well, I was born here. I do not have anywhere to move. I would really request that all of you consider helping us live peacefully in our own homes; "quiet enjoyment" is that term that I will broadly use, to enjoy our place of residence; and to help people understand that we have responsibility not only for ourselves, but for our friends and ours neighbors. It takes all of us to make a community. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: Annie, your situation is of a fireplace burning?

Ms. Leighton: That is correct. Another house right next door to that house has also installed a fireplace. I do not see a problem when you are up in Kōke'e or somewhere like that. Yes, you have a fireplace, but there are propane fireplaces that emit virtually no fumes.

Councilmember Yukimura: Is your concern about smoke from wood or is there burning of other things that cause a problem?

Ms. Leighton: I smell wood smoke and I also smell other acrid kinds of odors, which tell me that people are either burning treated wood or they are burning other kinds of refuse.

Councilmember Yukimura: Does the smoke from wood alone bother you?

Ms. Leighton: Yes.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Thank you for your testimony. Have you had any documentation through a doctor about adverse health effects of your exposure?

Ms. Leighton: No, I personally have no documentation, but I do have allergies and I have seen other people with documentation that that smoke is bothersome to them.

Councilmember Chock: Okay. Thank you.

Council Chair Rapozo: Are there any other questions for the speaker? I have one. Thank you for testifying. The Bill will criminalize that action. Is that something that you support? I heard you say less government and so forth.

Ms. Leighton: Well, I do not support needless criminalization of things that I think people should be compassionate, intelligent, and sensitive enough to work out.

Council Chair Rapozo: I understand.

Ms. Leighton: If it comes to it, yes. Again, we do not live in plantation days anymore. We live in a place where our neighbors are twenty (20) and thirty (30) feet away from us.

Council Chair Rapozo: Thank you. Mr. Hooser.

Councilmember Hooser: I think it is important for everybody to be clear on this Bill. The Bill criminalizes hurting someone's health, not irritating you.

Ms. Leighton: Irritating me is hurting my health because my health is my body, spirit, and mind.

Councilmember Hooser: But the Bill is very narrowly focused and you would have to prove that your health was harmed. I have gotten calls that we are banning fireplaces and the person with the fireplace has to intentionally burn it to hurt your health. It is not that it is going to change our culture. This is intended to narrowly approach the subject of people who burn, not just fireplaces, but burn things knowingly, intentionally, and hurting someone's health. That, as you mentioned, their freedom stops in my opinion, when it crosses into my health.

Ms. Leighton: Yes.

Councilmember Hooser: Thank you for your testimony. I really appreciate it.

Council Chair Rapozo: Thank you. Next speaker.

Mr. Watanabe: The next speaker is Lori Abbey-MacDonald, followed by Dustin MacDonald.

LORI ABBEY-MACDONALD: My name is Lori Abbey-MacDonald and I am here to talk about wood-burning fireplaces. We came last year, but I did not look up the Environmental Protection Agency (EPA) facts. What I did find this time when I did look it up is that according to the Clean Air Agency in California, people who are exposed to toxic air pollutions are certain concentrations for sufficient durations may increase their chance of getting cancer or experiencing other serious illnesses, such as reproductive problems, birth defects, aggravated asthma, strokes, and other respiratory illnesses. Fire smoke consists of air pollutants and fine particle pollution, which is emitted from a wood-burning fireplace and it contains carbon monoxide, nitrogen sulfide, sulfur oxides, and other volatile compounds that may be cancer causing like benzene, polycyclic aromatic hydrocarbons, formaldehyde, and dioxins. They can harm young children because their lungs are still growing. They can harm the elderly just because they are elderly or that is it, or they can harm those with existing lung disease. It also causes air pollution, heart problems, bronchitis, chronic bronchitis, irregular heartbeats, premature death, pulmonary hypertension, and if somebody is pregnant, they also should not be exposed. Comparing wood smoke to tobacco smoke: tobacco smoke stays in your body for thirty (30) seconds after inhaled and wood smoke is chemically active and can cause damage to your body cells for up to twenty (20) minutes and is forty (40) times stronger. Some cities that ban wood-burning, old and new, are Washington, California, Arizona, New York, Montreal, Quebec, and they have a much colder climate than us. We have already had two (2) pets die from cancer. I know this because they were operated on and biopsied. They had cancer. We are now dealing with our third pet who had a needle biopsy, came back cancerous, was operated on Monday, and he is having a hard time recovering. I am just praying that she got all of the cancer.

Council Chair Rapozo: Excuse me, Lori. That is your first three (3) minutes. Is there anyone else wishing to testify?

Ms. Abbey-MacDonald: We have been treated in the emergency room (ER) and I have doctors' notes for one of my grandsons and for myself, but my husband's doctor refused to do it. I think he was afraid that he would be called in to testify.

Council Chair Rapozo: Okay. You are able to come back after the first round of speakers. If you want to come back, you can come back. If you want to leave anything with us, our Staff can make copies and give you back your original. Thank you. Next speaker.

Mr. Watanabe: The next speaker is Dustin MacDonald, followed by Jody MacDonald.

DUSTIN J. MACDONALD: My name is Dustin J. MacDonald. I have been in Wailua all of my life and Kaua'i is my home. I am here today to talk about my experience with chimneys and the effect that it has had on my family. Just to be clear, I am not in the same area that my mom is because you were confused the last time, Councilmember Yukimura. This is a total separate incident that is happening. The first thing I would like to do is thank those veterans that were here earlier for giving us this opportunity to have a system like this; a government that we can civilize, come down here, and talk about these issues that are life-threatening to us, so we do not go out and kill each other in our neighborhood. It is the human nature to protect your family, and when you are pushed into a corner as you are watching your child slowly have the life purged out of him, the human nature feelings that run through your body—I cannot even talk about it right now. I just want to clarify a couple of things, too. Smoke is very hazardous to your health. It does not matter what type of substance you are burning. Wood-burning is one of the most dangerous things that you can breathe. It is way worse than tobacco smoke. I can sit here and fill you up with a bunch of factual information, but it would probably be clearer if you look it up yourselves. The fact is that I live in my home and I want to live in a normal environment where I can raise my children. I want to be able to utilize the potential of my body, health, and everything that I have that I have created. You have to take your family and remove yourself from your house because it is uninhabitable. That is not right. I think that the fighting has been done years ago. That is why people went to war because their homestead was at danger. That is why we went to war, which is to protect what is at home. We created all of this here and I think we need to deal with stuff in a civilized manner. When you are pushed into the corner when there is nothing else you can do, it is like this situation has brought myself to believe that I am on the beginning steps of having a mental breakdown; watching my children slowly get the life sucked out of them by someone else's amenity. Fresh air is a necessity. I need that to breathe. That is why maybe twenty (20) years ago, one of you would have been smoking at your desk right in this room, right now as we have this discussion. But why do we not do that anymore? We found out that smoke kills people and that is why they are banning smoking everywhere you look. There are times that we need to change.

Council Chair Rapozo: Thank you. That is your three (3) minutes. You will have an opportunity to return after everyone else speaks.

Mr. MacDonald: Thank you.

Council Chair Rapozo: Thank you very much. I appreciate your testimony. Next speaker, please.

Mr. Watanabe: Jody MacDonald, followed by Zaiden MacDonald.

JODY MACDONALD: Good morning. I am Jody MacDonald. *Mahalo* for letting us speak. I will try not to get so emotional. I just want to say that there is no other way. As a parent, you try to protect your child from harm and when there is somebody else that is trying to take their health and rights away, it is very devastating as a mom. You are constantly bringing them to the doctors and you try to get them better, but how can you when the harm is right by your house? We take them late at night because they are burning because they are supposedly cold. When I went knocking on their door, they were in a tank top and shorts. I am with my kids and I ask, "Can you please put out your fire? It is killing us." He just

said, "This is my right. There is no law saying that what I am doing is bad. Just get off of my property." We try to reason with him, but it is so hard. When we smell smoke, we have to close all of our windows and doors. We also have the purifier on. My kids are telling me every time, "I cannot breathe." So we have to bring them to the doctors again. I have a doctor's note for one of my sons. When you are at your wits end with everything, I am hoping that you can help us. Smoke is just smoke in general. It kills and it hurts, no matter what it is. I just hope that you can help us. I do not know what else to say. I have another letter from another neighbor that was not able to come that also has been affected with wood-burning chimneys. I asked our neighbor—there are things on Amazon from wood-burning to electrical or gas to just convert their chimney. The kit is only three hundred dollars (\$300). I do not know what else to do. Three hundred dollars (\$300) compared to our lives and our rights. That is all I have to say.

Council Chair Rapozo: Thank you very much.

Ms. J. MacDonald: Thank you.

Council Chair Rapozo: Are there any questions for the speaker? If not, thank you.

Ms. J. MacDonald: Zaiden, you can talk. Where is your letter?

Council Chair Rapozo: Just have him state his name.

Ms. J. MacDonald: Say your name.

ZYRYN MACDONALD: My name is Zyryn. I play sports and smoke hurts my lungs. Can you help us stop chimney smoke?

Council Chair Rapozo: Is that it?

Ms. J. MacDonald: That is his question.

Council Chair Rapozo: Okay.

Ms. J. MacDonald: Say thank you.

Mr. Zyryn MacDonald: Thank you.

Council Chair Rapozo: Thank you.

Ms. J. MacDonald: Say your name loudly in the mic.

ZAIDEN MACDONALD: My name is Zaiden MacDonald.

Council Chair Rapozo: You have to go a little closer to the mic.

Mr. Zaiden MacDonald: Please change the law because I almost died of smoke and I had to go to Kapi'olani because of smoke. I want to stay healthy and I cannot keep staying healthy by smoke. Can you promise to help me?

Ms. J. MacDonald: He has his doctor's note.

Council Chair Rapozo: Is that the one we received?

Ms. J. MacDonald: No, that is another.

Council Chair Rapozo: Okay. Can you give it to our Staff to make copies? Thank you.

Ms. J. MacDonald: Thank you so much.

Council Chair Rapozo: Is that Cash?

Ms. J. MacDonald: No, that is Zaiden.

Council Chair Rapozo: Which one is Cash? We have one regarding Cash and we have one regarding Lori Abbey.

Ms. J. MacDonald: Thank you.

Council Chair Rapozo: Thank you.

Mr. Watanabe: The next speaker is John Stoddard, followed by Stanley Gonsalves.

JOHN STODDARD: Good morning, Council. My name is John Stoddard. I grew up on the island of Kaua'i. I have lived in California for the last fifteen (15) years. I am just speaking to the idea of where does negligence end and a criminal act begin as far as this new... I know you cannot talk about it, but it is important to know that these children are going to be the managers, carpenters, estheticians, and the Council people of tomorrow when we are all gone. We know that smoking cigarettes is harmful and finally it has come that we cannot do that anymore. Is the luxury of having a fireplace more important than the lives of our future? If you are not conscious of your actions when they are told to you, is that not where this changes from negligence. That is all I have to say on that. Thank you for letting me speak.

Council Chair Rapozo: Thank you.

Mr. Watanabe: Stanley Gonsalves, followed by Jen Uits.

STANLEY GONSALVES: Hello. My name is Stanley Gonsalves. I have a fireplace. I also have an outside cooking facility where I barbeque. Whenever there was smoke, I had eighty (80) times people come over from the Fire Department and Department of Health to find out what I was burning. They came into my house and looked at the wood I was burning. They asked me about it and we talked. Now, I feel that whenever I go outside and cook, I do not want to hurt anyone, but I always make sure that, "Hey, be cool on the smoke." I go out whenever— not always, but I know for a fact that if my chimney emits soot, I will take it down. I look at my smoke and it is grayish, almost clear. Like I say, if anybody or if any of the Councilmembers want to come up to my house and see, I will light my fireplace and I will take it down if they can see any soot or black. That is dangerous, the soot and black smoke. As far as I see, I love to cook outside. I like to barbeque. I enjoy that. The reason for the fireplace is health reasons. In fact, I wait until it is very cool in the morning, usually about 4:30 a.m. or 5:00 a.m., I get

up and light the fireplace because my wife goes to work and when she gets up, it makes her feel good. I feel good too. Thank you very much.

Council Chair Rapozo: Are there any questions? Councilmember Yukimura.

Councilmember Yukimura: Mr. Gonsalves, thank you for being here, as well as all the others who have come. Where do you live in relation to... it looks like there are two (2) places where there are problems. Where is your house in relation to those two (2)?

Mr. Gonsalves: I live by Ms. MacDonald, which is 317 Molo Street.

Councilmember Yukimura: The one with the children?

Mr. Gonsalves: I am sorry.

Councilmember Yukimura: The one with the children?

Mr. Gonsalves: No. Are you talking about Kanani? She lives a house away from Ms. MacDonald.

Councilmember Yukimura: Okay, but that is where your house is?

Mr. Gonsalves: Yes.

Councilmember Yukimura: They are normally downwind?

Mr. Gonsalves: Yes.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Mr. Kagawa.

Councilmember Kagawa: Thank you for your testimony, Mr. Gonsalves. You said that the State Department of Health has stopped by? Was that Rod Yama?

Mr. Gonsalves: Yes.

Councilmember Kagawa: But he is retired now?

Mr. Gonsalves: Yes.

Councilmember Kagawa: Has the new guy come by?

Mr. Gonsalves: No.

Councilmember Kagawa: Because there is a replacement. I think he has been in for about six (6) months, but I was wondering if the new Department of Health Clean Air guy has come by.

Mr. Gonsalves: No. Mr. Yama came into my house and he took measurements and looked at my wood right outside. He looked at the fireplace.

Councilmember Kagawa: How many times do you estimate— because I have my own conversation with Mr. Yama. How much times would you estimate that he talked to you?

Mr. Gonsalves: About forty (40).

Councilmember Kagawa: Okay. Thank you. That is close to the number I had.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Mr. Gonsalves, some of those who feel they are adversely affected by your smoke, they suggested a gas fireplace. Have you looked at that? What are your thoughts about that?

Mr. Gonsalves: For a time I was burning koa, which is great to burn.

Councilmember Yukimura: Koa?

Mr. Gonsalves: Yes. Now I am burning plum. I prefer burning those instead of having gas in my house.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Mr. Kagawa.

Councilmember Kagawa: You are talking about the weed koa, right? Not the koa that we use for furniture, right?

Mr. Gonsalves: No. What happened was that somebody in Anahola cut down some koa trees.

Councilmember Kagawa: The one that is more referred to like a weed?

Mr. Gonsalves: No.

Councilmember Kagawa: The expensive one?

Mr. Gonsalves: Yes.

Councilmember Kagawa: Wow. That would seem like you are burning money. Anyway, thank you.

Mr. Gonsalves: It was all cut up.

Councilmember Kagawa: In smaller pieces?

Mr. Gonsalves: Yes.

Councilmember Kagawa: Thank you. Thank you, Chair.

Council Chair Rapozo: Mr. Chock.

Councilmember Chock: Thank you for all parties for being here. We are kind of getting to the heart of it. I think this is what needs to happen in order for us to move forward. I am assuming that you folks have had in-depth discussions with your neighbors about the issue and have discussed possible alternatives. What, in your opinion Mr. Gonsalves, is stopping us from getting us to a resolution here? We understand and see that something needs to be in place here. Do you have anything that you can offer?

Mr. Gonsalves: Well, how can you negotiate with somebody who calls the Fire Department, Department of Health, and the Police Department to come to my house and say that I was burning rubbish in my fireplace and on the hill? Which, I am sorry to say, are all lies. How are you going to negotiate with someone like that?

Councilmember Chock: Have you folks sought out any opportunities to mediate and come to some resolution?

Mr. Gonsalves: I was ready to do it until something happened whereas my neighbor said something awful to my wife, and then my wife said, "Leave it alone. Do not bother."

Councilmember Chock: Okay. Is there still a willingness to try to resolve or come to some resolution?

Mr. Gonsalves: Well, my neighbor, Kanani, next to Ms. MacDonald, told me, "Stan, all you have to do is please call me whenever you are going to light the fireplace, so I can close my windows." I said, "Okay." For the past three (3) months, every time I light my fireplace, I call her. Sometimes I call her 4:00 a.m. or 5:00 a.m. Then we see each other in the street and she says, "Stanley, thank you so much." I say, "Hey, I am keeping my word." We have some kind of agreement where I follow through. It is not always that it is my smoke because it is not always that I light the fireplace. I cook maybe once or twice a week outside. The fireplace is only lit during the winter.

Councilmember Chock: Thank you.

Council Chair Rapozo: Yes, he answered the question. Does anyone else have a question?

Councilmember Hooser: Good morning. Thank you very much for coming. While your situation with the MacDonald's is the focus of the discussion, this is not an attempt to judge you or them about who is telling the truth. This is just to try to get to the situation.

Mr. Gonsalves: The truth speaks for itself through newspapers.

Council Chair Rapozo: Hang on.

Councilmember Hooser: How far is your home structure from your neighbor's house?

Mr. Gonsalves: I cannot say.

Councilmember Hooser: Ten (10) or twenty (20) feet?

Mr. Gonsalves: Probably.

Councilmember Hooser: I think it is a relatively dense neighborhood.

Mr. Gonsalves: Yes.

Councilmember Hooser: We have had some letters here and as the Bill proposed require proof that the person's health will be harmed. That is the source of the Bill.

Mr. Gonsalves: I understand.

Councilmember Hooser: If someone's health is being harmed by someone's action intentionally, then that would be against the law. If it is not being harmed and if it is not intentional, then it would not be against the law.

Council Chair Rapozo: Mr. Hooser, do you have a question for him? You will have an opportunity to explain your...

Councilmember Hooser: I just want to make sure that Mr. Gonsalves understood the attempt of this Bill.

Council Chair Rapozo: I am sure he will be here.

Mr. Gonsalves: Mr. Hooser...

Council Chair Rapozo: Mr. Gonsalves, hang on. Mr. Hooser, do you have a question for him?

Councilmember Hooser: Do you understand what the Bill is trying to accomplish?

Mr. Gonsalves: I do, yes.

Councilmember Hooser: Okay. Thank you so much.

Council Chair Rapozo: Thank you very much. Any other questions?
Councilmember Kaneshiro.

Councilmember Kaneshiro: Mr. Gonsalves, just a quick question. When the Department of Health visited your house, what were the results of that or any discussion that came out of that?

Mr. Gonsalves: Mr. Yama was getting pretty frustrated about this whole matter because from home, he would call me in the morning and say, "Stan, I have a report again." For a while, he was calling me every day. "Stan, I have a report again." This was during the winter months, but he told me I was

doing things right, and that nothing was wrong. In fact, everybody like the Police Department and Department of Health said I was doing nothing wrong. In fact, one day they came when I was barbequing outside and they said, "We had a complaint." So they checked the wood. At that time, I had the hardwood from the west side. I forget what they call it. They said, "That is alright." I asked, "Hey, you guys hungry?" They said, "No thanks. Smells good though." Then they left. It is not intentional that I do this. I cook because I love to cook outside, but the smoke is the problem. I smelt smoke practically all of my life when going down to the beach and cooking, and look at me today. I am healthy at the age of seventy-two (72).

Council Chair Rapozo: Thank you. Any other questions?
Mr. Kagawa.

Councilmember Kagawa: What is your cooking method for the majority of the time? Is it like what they call "*hibachi*" or do you smoke it for a while?

Mr. Gonsalves: No, *hibachi*.

Councilmember Kagawa: Okay.

Mr. Gonsalves: I just put brochettes and light it up with a fluid.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Any other questions? If not, thank you very much, Mr. Gonsalves.

Mr. Watanabe: The last registered speaker is Jen Uits.

JEN UITS: Hello. My name is Jen Uits. I live up in the homesteads and I am coming to support some neighbors who are struggling with this situation and we are up around the corner, so we only occasionally do get the smoke. I ask myself, "What is that?" Then I look over and I can see the smoke coming up, so to me, it does seem visible and my daughter is more sensitive with her allergies and her bedroom is on that end, so she can be bothered by it, but not so much suffering in the way that the closer neighbors are. It is hard to hear how much they are suffering and that it is continuing. We do not want to get into each other's business too much. I understand that it seems with neighborhoods when we are dense like this that the neighbors are butting heads. Pride definitely gets in there and I think that can keep people from doing the right thing. The right thing is pretty obvious, which is to get a gas-burning fireplace, which I have had before and they are quite warming, so that would seem to take care of the warming situation. I was nervous that this would infringe upon our right to do some campfire burning in our backyard, which we do not really hardly ever do, but I want to be able to go and roast marshmallows and hot dog when we want. I was comforted to hear that if the smoke was actually bothering somebody to the point of bothering their health, that is when you would be crossing the line with the situation; not just if they see some smoke from your backyard and they can call you in because you are roasting marshmallows. That comforted me in feeling like I could come in and support this because this seems to definitely have crossed the line and be bothering people's health in a documentable way, so I am here to show support for that. Again, you do not want to add a whole bunch of restrictions on our

lives or our neighbors' lives, but when it starts really affecting someone's health, it seems that it is clear that it is time to do something about it, especially when it does not seem like it could be too much of a runaway train, people calling in people just for seeing smoke. It has to be documented that it is actually bothering their health. To me, that seems like a protective measure that will not get out of control. That is just my opinion. Thank you.

Council Chair Rapozo: Thank you. Any questions? If not, thank you very much. Next speaker, please.

Mr. Watanabe: That was the last registered speaker.

Council Chair Rapozo: Anyone else? I am sorry. You can talk now and we will go around. Sorry, we just want to be consistent. Thank you.

ANNE PUNOHU: *Aloha.* My name is Anne Punohu. *Aloha* to the new Council, which I have not been before. Some of you may not like what I have to say today. I have listened in this room, and in my opinion, this is not a Council matter. This is a matter of civil litigation in a court of law and to establish some sort of ground rules of where this is and where we are going. Gary, I have always supported you on everything, but on this, I cannot support you. The reason why is because when I read the Bill, to me, the one place that can make me cheat on my very famous diet is "Chicken in a Barrel." They have open, smoking stuff going down the road every single day in Kapa'a Town and I love the smell of it. I have been pretty much raised in Hanalei and we spend our lifetime cooking on the beach, people campout, and there is *hulihuli* chicken. There are all kinds of restaurants that have smoke coming out of smokestacks out of their buildings. This is my concern. If those concerns and issues can be addressed, that is one thing. But I see exactly what is going to happen with this Bill happening right in this room. People will be calling in. I can sympathize with this women because I have been an asthmatic my entire life. I cannot smoke and be around a lot of smoke; however, I empathize with her completely, but I just feel that there needs to be a better way to go about this where we are not going to turn into a "Hatfields and McCoys" for everyone. Like the other women said, she wants to be able to go out in her backyard and put on a hotdog and marshmallow, but her neighbor who is freshly moved and possibly from the mainland, who does not understand that because they come from a big city, will be appalled that there is somebody in the backyard with smoke, drifting into their window. They will make calls. I just do not see that there are enough safeguards to prevent that in this Bill right now. My main concern is that we still have rural lifestyle on this island. I do not agree with Ms. Leighton. We are still Kaua'i. I am not ready to throw in the hat on that yet and we still have a lot of people who earn their living from smoke meat and we have a lot of people who earn their living from smoking meat on their property. That is another issue. I am sorry, but I still want to have *hulihuli* chicken and I still want to have "Chicken in a Barrel." To be able to function, I just think that perhaps, these people need to go to court first and have something established first. Then we can come back and create something that is a little bit more palatable to more of a still rural island lifestyle, while still making sure that people do not do "Hatfields and McCoys" on each other. *Aloha.*

Council Chair Rapozo: Thank you very much. Any questions?
Mr. Hooser.

Councilmember Hooser: Just a quick question.

Ms. Punohu:

Sure.

Councilmember Hooser: I am not sure if you are going to be around later, but did you know that Maui has an almost identical law and it has been on the books since 1949 and has not kept “Chicken in a Barrel” or smoke meat— as far as I know, we are looking to see what repercussions, but I do not believe since 1949 until now that there has been any significant blowback from this. Were you aware that Maui has the same...

Ms. Punohu: I was not aware, but if I could just comment that we are not Maui. We are Kauaʻi and we have a different lifestyle here. I think that people would feel much better if the legislation were clearly written to that effect that it would not affect those particular activities. Then I think that would be an improvement because we are Kauaʻi and Maui is a much bigger than we are.

Councilmember Hooser: Right. The law since 1949 was the point.

Ms. Punohu: I am really surprised to hear that.

Councilmember Hooser: Thank you very much.

Council Chair Rapozo: Thank you. Is there anyone else wishing to speak that did not register? Anyone else who would like to speak for the second time?

Ms. MacDonald: I am Lori Abbey-MacDonald again. Furthermore, I wanted to tell you that smoke from wood-burning are directly linked to health problems. Small particles less than ten (10) micrometers in diameter pose the greatest problems because they get deep into the lungs and some may even get into the bloodstream. Among these particles are fine particles, which are two point five (2.5) micrometers in diameter and smaller. These fine particles affect both your lungs and heart. When people heat their homes with wood, they are exposed to fine particle pollution. Also, seventy percent (70%) of this smoke can and does, in our case, reenter the home and neighborhood dwellings. Numerous studies— I told you all that junk about all of this stuff, but in our case, we have had multiple trips to the emergency. This was back in 2012 when the complaints were made and the Gonsalves may not realize that it was not just me complaining. Other people in their neighborhood were complaining. We have had multiple trips to the emergency room and our doctor’s offices. For me personally, I get burning eyes every time he lights his fireplace. I have difficulty breathing, asthma; my husband and me. We had our friend Maria, who lived with us, who eventually— last time we came, she was just put on oxygen and I believe it was... even though she had Chronic Obstructive Pulmonary Disease (COPD), she had to be on that twenty-four/seven (24/7) after moving in with us and I believe it was because of the smoke exposure she was getting in our house. Our house was built in 1981. We moved into our neighborhood when there were only three (3) houses in our neighborhood. The house next door that affects us the most is just... that was built... I do not remember what year. Maybe in 1985 or so. We tried to go to Kauaʻi Economic Opportunity (KEO) for mediation with the Gonsalves, but they refused. We were going to pay for it and everything and this was back in 2012. I also have a petition that Representative Tokioka made me do back in 2012 that was sent to Jay Furfaro, Bernard Carvalho, Dileep Bal, Senator Kouchi, and Representative Tokioka. It was received on February 17, 2012. The petition was signed by people in our

neighborhood and it says, "Does the smoke from 317 Molo Street fireplace ever bother you, make you feel ill, or difficult to breathe?"

Council Chair Rapozo: Excuse me, Lori. That was your second three (3) minutes. I need to stop you there because that is your time. I will open the floor for any questions. Councilmember Yukimura.

Councilmember Yukimura: Excuse my ignorance, but what is COPD?

Ms. MacDonald: Chronic Obstructive Pulmonary Disease.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Mr. Hooser.

Councilmember Hooser: I believe you were about to tell us how many names might have been on the petition signed.

Ms. MacDonald: This was just one (1) trip around the block when we were walking our dogs and we had forty-four (44) signatures.

Council Chair Rapozo: Okay. Thank you. Mr. Kagawa.

Councilmember Kagawa: Thank you, Lori. You mentioned that Representative Tokioka and Senator Kouchi. What are they doing about trying to help you fix your problem?

Ms. MacDonald: Nothing. The Department of Health... one (1) policeman told me that if they came again, they would take me into court and give me a ticket. I was told by the head police officer— I do not remember his name— that is not true when you are bothered by smoke inhalation. Also, we have a fire detector that detects carbon monoxide and it went off one time. Something is definitely going wrong in our house.

Councilmember Kagawa: There is a new Clean Air person who has taken Rod's place.

Ms. MacDonald: No, because I just wanted to not E-mail anybody, but the Councilmembers. I have only done it a couple of times this year.

Councilmember Kagawa: What I was going to say or suggest was that perhaps a new person may have a different solution that Rod had.

Ms. MacDonald: The State has now transferred it to the County. Was it in July?

Councilmember Kagawa: The State still has the clean air regulation. I am just saying that if this is a clean air matter, then this...

Ms. MacDonald: This is a health matter. This is not just for clean air.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Thank you. Anymore questions for the speaker?

Councilmember Chock: I am just trying to get a handle on the experience and severity reading about the particular matter here. Do you visibly see smoke in your house?

Ms. MacDonald: Yes. My doors and windows are shut and our air purifiers and fans are on. It is hard to breathe in our house.

Councilmember Chock: Okay. Thank you.

Council Chair Rapozo: Are there any more questions? If not, thank you very much. Are there any other speakers who want to testify? Please come on up if you want to speak again.

Mr. MacDonald: Once again, I would just like to talk about a couple of things here. I grew up on Kaua'i. I dealt with the sugarcane fields on fire. I have neighbors that smoke meat. I have been around barbeque cooking all my life. It has never impacted me like this. This is all night long. Every single breath that you take and you are trapped. You cannot go anywhere because it is in your house. At what point does the law allow children's lives to be taken by somebody else's amenity. It is not a necessity that you do these things. I clearly hope that this law can go right to the source of what is taking people's lives, not people cooking. You are not cooking food at 3:00 a.m. You are not cooking food all night long. You cook your food and you put out the fire. Occasionally, you have an *imu* that burns now and then, but nobody does an *imu* every single night. Every single night you have smoke in your house. It does not take long for it to start draining the life out of you where everything else that your life is applied to is suffering because you cannot even properly function straight because your mind is in fear, just like the veterans at war. You are at war with somebody else's amenity that is taking the life of your children. This is about life. It is not about "my neighbor's hedge is growing into my yard." It is not a nuisance. It is about my child's life, mine, and all the other neighbors that do not even realize what is happening to their health. I spoke to neighbors and they say, "Yes, it seems like my allergies have been acting up and I have never really felt like this before." Well, guess what—you are being exposed to a very small amount of smoke that is slowly killing you. I just do not think it is right for all of this stuff, this system that we created; all the fighting that we have done; following the law and being a good citizen; and paying your taxes. I do not think it is right to have to die in your house because of somebody else's wants. The information that was spoken about earlier is a much sugarcoated story. I have spoken to the new Department of Health guy and he said, "There is nothing he can do." Flat out, he said, "I cannot touch this. I was informed by Rod Yama about everything that has happened and there is not a thing that I can do," straight from his mouth. It just pushes me into a corner where I do not know what else to do. I am coming here today hoping that we can intelligently resolve this without stepping on people's rights to cook food in their yard and do stuff like that. I hate government. I hate you guys telling me what I have to do and putting on my seatbelt...

Council Chair Rapozo: Okay, your time is up.

Mr. MacDonald: We need something.

Council Chair Rapozo: Mr. Kagawa, questions?

Councilmember Kagawa: If I remember the last time, your house is up in Kapahi.

Mr. MacDonald: I live in Wailua Homesteads.

Councilmember Kagawa: It is Wailua Homesteads, too?

Mr. MacDonald: Yes.

Councilmember Kagawa: How far is it...

Mr. MacDonald: I do not have anything to do with their chimney smoke. It is a separate ordeal. It is entirely different. I cannot believe that God has sent this problem to me.

Councilmember Kagawa: Can you just answer my questions? How often does your neighbor, the one who is affecting yourself and your family and your kids; how often is he burning in the chimney?

Mr. MacDonald: Every night.

Councilmember Kagawa: Even in the summer months, too?

Mr. MacDonald: Well, they go away for a long time, but I can smell smoke coming from other sources that are not as close to me, so the impact is not as great, but it is still there from other people that I cannot even see. The main source is two (2) houses down and it is all winter long.

Councilmember Kagawa: Yes, whenever it is cold, basically.

Mr. MacDonald: It is all winter long.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: I think it got clarified in Councilmember Kagawa's question. Thank you. You are not affected by Mr. Gonsalves?

Mr. MacDonald: Not at all.

Councilmember Yukimura: It is other neighbors. You live in a different place.

Mr. MacDonald: Yes, I do.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Aside from the conversation that you had with the new guy that you just spoke of, that I guess Rod Yama said, "Everything has been done." Have you filed any written complaints with the Department of Health?

Mr. MacDonald: Well, as soon as he told me to my face that there is nothing he can do after ten (10) years of chasing this down and three (3) inches of paperwork; it is spurious.

Council Chair Rapozo: Yes, and we have been in receipt of those letters from the State as well, which I just happen to disagree with the State that it is not their problem. Anyway, that will be discussed later in the day. Any more questions for the speaker? If not, thank you very much.

Mr. MacDonald: Thank you folks for all this time and your energy for doing this. At least this is some type of hope. Thank you.

Council Chair Rapozo: Anyone else wishing to testify? If not, thank you very much.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa moved to receive C 2015-35 for the record, seconded by Councilmember Yukimura, and unanimously carried.

Council Chair Rapozo: Thank you very much. Next item, please.

COMMUNICATIONS:

C 2015-38 Communication (12/15/2014) from the Director of Parks & Recreation, requesting Council approval to accept a monetary donation in the amount of three thousand dollars (\$3,000) from Synovus Trust Company, to fund the Hanapēpē Neighborhood Center and Kalāheo Neighborhood Center Youth Programs (\$1,500 each): Councilmember Chock moved to approve C 2015-38 with a thank-you letter to follow, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Go ahead.

Councilmember Kagawa: I have a quick question for Ian.

Council Chair Rapozo: Okay. With no objections, the rules are suspended.

There being no objections, the rules were suspended.

IAN K. COSTA, Deputy Director of Parks & Recreation: *Aloha kakahiaka*, Councilmembers. Ian Costa of Parks & Recreation.

Councilmember Kagawa: Ian, I just have a quick question. Who is Synovus? I have never heard of that trust company and why are they being so nice to our County and donating three thousand dollars (\$3,000) for youth programs. It is a great donation, but I just want to know more about this company.

Mr. Costa: Honestly, I cannot answer that, but clearly we appreciate the donation and we will use it for helping our programs for the youth.

Councilmember Kagawa: That is fine. Thank you, Chair.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: May I ask that you find out and let us know?

Mr. Costa: Sure.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other questions for Ian? If not, thank you very much Mr. Costa.

Mr. Costa: Thank you.

Council Chair Rapozo: Is there anyone wishing to testify on this? If not, the meeting is called back to order. Discussion? I just want to thank them. I would assume that it is some private citizen that has a company called Synovus, I would hope. As long as we are not *quid pro quo*.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2015-38 with a thank-you letter to follow was then put, and unanimously carried.

Council Chair Rapozo: Next item.

C 2015-39 Communication (12/15/2014) from the Fire Chief, requesting Council approval to apply, receive, and expend two (2) Assistance to Firefighters Grants (AFGs) for the following:

1. The first grant will be used to train and certify fifty (50) Fire Inspectors to comply with the National Fire Protection Association (NFPA) standard for the management of Fire Prevention Organizations. The project will cost sixty thousand dollars (\$60,000), with AFG covering ninety percent (90%) or fifty-four thousand five hundred forty-six dollars (\$54,546), and the Kaua'i Fire Department (KFD) covering the remaining ten percent (10%) or five thousand four hundred fifty-four dollars (\$5,454).
2. The second grant will be used to purchase an Aerial Apparatus Vehicle: a Quint Pumper, five hundred (500) gallon tank, and a seventy-five (75) foot vertical reach ladder. The Quint Pumper will enhance fire protection for hotels, condominiums, and housing units on Kaua'i. The project will cost seven hundred ninety-one thousand dollars (\$791,000), with AFG covering ninety percent (90%) or seven hundred nineteen thousand ninety-four dollars (\$719,094), and the KFD covering remaining ten percent (10%) or seventy-one thousand nine hundred nine dollars (\$71,909).

Councilmember Kagawa moved to approve C 2015-39, seconded by Councilmember Kualii.

Council Chair Rapozo: Is there anyone wishing to testify on this matter? If not, any discussion? Mr. Hooser.

Councilmember Hooser: What is an aerial apparatus vehicle? Is that a drone or something?

Council Chair Rapozo: Chief? With no objections, the rules are suspended.

Councilmember Hooser: There has got to be simpler words for these things.

There being no objections, the rules were suspended.

ROBERT F. WESTERMAN, Fire Chief: *Aloha.* For the record, Robert Westerman, Fire Chief, County of Kaua'i. Councilmember, an aerial apparatus is not a drone. "Aerial" means when you do an elevated ladder or an elevated platform. It becomes an aerial unit and it is no longer on the ground. It is like a ladder truck.

Councilmember Hooser: That explains it. I have a quick follow-up question. On either one of these grants, are there ongoing expenses that are going to be incurred?

Mr. Westerman: The first one will be a singular training module and the purpose of that is to actually help reduce costs by having firefighters trained to help the inspection section through the inspections. The second one is ongoing maintenance for a vehicle. It will be replacement vehicle for a future vehicle and we are hoping to get the funds to buy an aerial apparatus, so that we can put that into our fleet and replace an aging vehicle.

Councilmember Hooser: So there will not be any significant new expenses as a result of this?

Mr. Westerman: No, it is like any other vehicle that we purchase. It will have ongoing expenses.

Councilmember Hooser: Thank you very much. Thank you, Chair.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Hi, Chief. Happy New Year.

Mr. Westerman: Happy New Year.

Councilmember Yukimura: So this aerial apparatus vehicle is a replacement? Is it going to replace something that we already have?

Mr. Westerman: Yes, it will be. In this case, if we are awarded the grant and purchased a vehicle, it will replace the engine that is in Kōloa, and then it will move to a different station, and then it would push down a

vehicle into a reserved status. It is like when we buy any new vehicle. That is what we do: we replace the oldest vehicle. In this particular case, this apparatus would go to Kōloa because that is where the majority of our hotel operations are.

Councilmember Yukimura: So we will not need to build a new garage or new facility to house it?

Mr. Westerman: We are trying to spec it so that it fits within the existing house. If you notice, it says that it is a seventy-five (75) foot aerial and that is the maximum we can get to get the link to fit inside of the firehouse. It does not require a new facility, no.

Councilmember Yukimura: So if it does not fit, you are not going to get it?

Mr. Westerman: Well, it is going to be specked to fit.

Councilmember Yukimura: Okay. I do not know that we anticipated the need for a structure for our helicopter and now we have to do that, right?

Mr. Westerman: Right.

Councilmember Yukimura: For this one, we are not going to be in a situation like that.

Mr. Westerman: Right.

Councilmember Yukimura: For the maintenance, do we have the skills to maintain it?

Mr. Westerman: Yes, but just like any other vehicle we purchase, we have ongoing maintenance costs. Eventually, this will knock one off of our equipment status. This will take our oldest vehicle and knock it off, so that continued maintenance will no longer be required. For a few years, as we do with any knock out of a vehicle, the older they get, the more maintenance they require. As we knock off an older vehicle, then all the extra maintenance that is done on that one is saved by not doing as much on the newer vehicle.

Councilmember Yukimura: With seventy-one thousand nine hundred nine dollars (\$71,909), which is the County's share; is that in the budget?

Mr. Westerman: We have a vehicle coming off of lease at the same time if this gets approved and we will transfer that. Actually, instead of having that and being an ongoing lease for seven (7) years, that one year we could use to fund that one year because the other costs will be coming in from the grant.

Councilmember Yukimura: So it is not seven (7) or eight (8) years of seventy-one thousand dollars (\$71,000)?

Mr. Westerman: Right.

Councilmember Yukimura: That is very good.

Mr. Westerman: It would be. We are lucky that the Assistance to Firefighters Grants (AFG) has put this type of apparatus as a priority. We have had the need for several years. We just waited to find where we have an opportunity to have someone help us purchase it because it is more expensive than a regular engine. Of course, it has special operations involved in it and it does more than a regular truck.

Councilmember Yukimura: What is "AFG?"

Mr. Westerman: Assistance to Firefighters Grant.

Councilmember Yukimura: Okay. Sorry, it is right in your memo.

Mr. Westerman: That is alright.

Councilmember Yukimura: Well, I guess we can be glad that we have a four (4) story height limit, right?

Mr. Westerman: Yes. I am glad that you asked that because one of the things when you say, "Well, why do we need it for a house fire? You do not need the big, elevated platform." Well, when we do some of our neighbors... build some of our newer communities like we are in Hanapēpē, we are condensing the community. What happens when you condense the community is that you put the houses closer together. In that case, we have a lot of culdesacs coming in that community. When you have a large fire, you cannot get an apparatus in one direction and another fire engine coming from another direction, so you have two (2) or three (3) engines on a house fire. For example, for the one we just had in Kīlauea, we had five (5) pieces of apparatus on that fire and twenty-two (22) firefighters fighting in that fire. So you can imagine the size and complexity of a little scene and if you are stuck on a little, small street now and you have only one (1) access in when you lay in that first waterline, you have a problem. Seattle is a very good model for this because they have a lot of Quints. They just about have gotten rid of their engines because they had denser communities, so a vehicle like this can come down the street on the other side, elevate the water, and spray down over the top of another house because they are that close together. That is another reason in housing of how we can use it.

Councilmember Yukimura: That is interesting that it brings up the design factor of our neighborhoods because in our Multimodal Transportation Plan, it talks about connectivity, so a more grid model than a culdesac model, too.

Mr. Westerman: Right. As you know, we are part of that task force and we are actively involved and making sure...

Council Chair Rapozo: Chief, let us get back to the grant.

Mr. Westerman: I am sorry. That is for another day. I understand.

Council Chair Rapozo: JoAnn has this unique ability to always circle back to that. She is just talented.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: We are talking about a grant to buy a fire truck.

Councilmember Yukimura: Chief, on the first item, to go from four (4) to fifty-four (54) Fire Inspectors— that seems like a very creative approach and it is somehow optimizing your use of your personnel.

Mr. Westerman: Right. It is the balance of hiring versus overtime. It is better to start with the need of overtime. We have the need for additional Fire Inspectors. We just know that we are not getting everything done with all of the work that they have to do. How do we compliment that? Well, overtime is one way to do that. At some point, overtime does not become affected, so this way, we train all of the firefighters to become certified to do the inspections, and then they can assist on an overtime basis to help the bureau move through their inspection process. That is what this is; this is the groundwork to do that and provide that certification.

Councilmember Yukimura: I have read in the National Association of Counties (NACo) news about using contract inspection like getting a company instead, then it does not translate into pensions. Have we looked at that?

Mr. Westerman: We have not looked into that, no.

Councilmember Yukimura: Like you say, if overtime costs start getting big, and that is an area that we have tried to condense down, it might be a better way. I guess I will ask that you look at that alternative.

Mr. Westerman: We can do that.

Councilmember Yukimura: Yes, because apparently that is being done in other Counties. Thank you.

Council Chair Rapozo: Are there any other questions for the Chief?
Councilmember Chock.

Councilmember Chock: Thank you, Chief, for being here. My question is about the current engine that we have at Kōloa that is going to be replaced and how long it has been in operation and its actual use. What do we typically expect for the use of an engine that we have and where are we with it? I am assuming that we have a depreciation schedule, so we can track its viability and where this might end, so if we are taking that engine out of service or are we going to contribute somewhere else?

Mr. Westerman: Right. Well, that particular engine in Kōloa would just go somewhere else because it is still within (inaudible). That is a very good question. We do have a vehicle replacement plan. Our engines typically last twelve (12) to fifteen (15) years and over the last six (6) years, we have converted our budget to be a lease for our engines, so that we have a steady cost because it is awfully expensive to replace it. An example is as you were saying, we push vehicles down to where we have two (2) that are what we call “reserve status engines.” As an engine goes out of service immediately, we can call and have an engine brought in to replace it, so that that district does not lose any of its capabilities. Those are the older engines and because of that, we actually have one (1) not out of service, so we only have one (1) reserved. Just like you said, that process— they just kind of

work their way down and they fall off. This one has already fallen off. We are right in the middle, as you can tell from the budget, of purchasing the next vehicle to come in, and when it comes in, we actually will not fall one off because we have already fallen one off. Then this example for the next year, we purchase this vehicle; the next one will fall off. If I am not mistaken, I think there are both 1996 model engines that are falling off right now. That is kind of how we do the process. We do not buy a new one for the reserve; we buy a new one to put in service, and then it replaces one and it works its way down.

Councilmember Chock: So we can expect about fifteen (15) to twenty (20) years of service out of this Quint?

Mr. Westerman: Yes.

Councilmember Chock: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I really compliment you on your equipment replacement plan. It is very good.

Mr. Westerman: Thank you.

Councilmember Yukimura: On the first item where you are training inspectors; do you have a plan for using them and have you projected that costs if it is going to be overtime costs?

Mr. Westerman: Yes, it would be overtime costs. We have an initial projection. We are not sure how close that would be. Also, what we are going to be doing is part of those funds does not all come out of just... I guess it does come out of the budget... it just depends on where it comes out of the budget. We have started two (2) years ago. We increased the fee and started the inspection permitting fee. Part of those costs will be worn out of that fee now that we have started to build up that fund in order to use that. That was part of the reasons for that fund, which was to help with the inspections and to help with the permitting process rush that we have for fireworks and those kinds of things.

Councilmember Yukimura: So the fees are not paying for the full cost?

Mr. Westerman: No, the fees do not pay for the full cost because the fees do more than just that. The fee is collected for more than just that.

Councilmember Yukimura: I see.

Mr. Westerman: The fee is collected for a myriad of things: one, to provide some training; another one for them to do the inspections and overtime for the inspections; and travel for the training because most of the training— in this particular case, this is actually the cheapest way to do it. Nationally, there are programs that you can go and send inspectors to get the training. When they come into the bureau permanently or permanently for two (2) or three (3) years when they come in, we send them out to train. But this is such a mass that we are actually going to bring the training here. This is a significant savings versus sending two (2) or three (3) out every six (6) or seven (7) months to the mainland to get the training.

Councilmember Yukimura: What are the projected overtime costs?

Mr. Westerman: I will have to get back to you on that. I do not know off the top of my head.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Thank you. Any other questions? If not, thank you very much, Chief. I will call the meeting back to order. Any further discussion? Councilmember Chock.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Thank you. I am real supportive of the direction with this apparatus for all the things mentioned and its need at this time, especially as we progress and grow as an island. I think one of the things that the Chief talked about was being to access and shoot water from the top down pretty quickly with the ladder, but also to access the roof for ventilation is one of the key aspects to deterring horizontal damage in a house. You can actually save property by doing the quick ventilation on the roof and I think this is going to help. Thank you.

Council Chair Rapozo: Anymore? Go right ahead.

Councilmember Yukimura: I also really appreciate the resourcefulness and foresight in getting the aerial apparatus vehicle. I like the idea of cross training in the first issue, but I am concerned about overtime costs, so I really hope that the Chief will look at the alternative that has been used in other Counties if that is a viable alternative in Hawai'i because overtime costs can easily get out of control.

Council Chair Rapozo: Thank you. Any other discussion? If not, thank you. Next item, please.

The motion to approve C 2015-39 was then put, and unanimously carried.

C 2015-40 Communication (12/22/2014) from the Housing Director, requesting Council approval for the following:

1. Fee simple acquisition from the owners of the residential unit situated at 3920 Haa Street, #123, Lihu'e, for not more than \$197,950;
2. Fee simple resale of the residential unit situated at 3920 Haa Street, #123, Lihu'e, for not more than \$197,950, to a participant on the Affordable Housing Program Waitlist whose household income does not exceed 80% of the Kaua'i Median Household Income (KMHI); and
3. Authorize the County Clerk to sign legal documents related to the acquisition and resale transactions.

Councilmember Kagawa moved to approve C 2015-40, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? Councilmember Yukimura.

Councilmember Yukimura: I want to commend the Housing Agency for their work here. As you can see, we are selling a leasehold, right? Is this fee simple?

Council Chair Rapozo: Fee simple.

Councilmember Yukimura: Okay. Well, I have a question about that, but it is not going to stop this. I just want to note that one hundred ninety-seven thousand dollars (\$197,000) is a really affordable price. That is part of the mission of this County and I am glad that we are doing that. I have a question about why it is not leasehold. Can you answer it? Great, thank you.

Council Chair Rapozo: With no objections, the rules are suspended.

There being no objections, the rules were suspended.

STEVE FRANCO, Homebuyer Specialist: For the record, Steve Franco, Homebuyer Specialist with the Housing Agency. For this particular project, the Kamāmalu Condominium Project—the reason for the fee simple sale is because the condo is approved by Fannie Mae as a fee simple property. They are not allowing financing as a leasehold property, so for this particular project, it is a little bit different than some of the other properties we have sold, which are almost all leasehold. Just for financing reasons, we have stuck to leaving it as a fee simple sale.

Councilmember Yukimura: Thank you for the explanation. That project, however, is a real disappointment because all those units were supposed to be affordable and the Council released the developer from the requirements. They are the affordable housing contribution from Kaua'i Lagoons for eight hundred fifty (850) permanent resort units and I think we were supposed to get twenty-five (25) of them for affordable housing that was meant for Marriott workers and we only got two (2) I think.

Mr. Franco: There were a total of thirty-one (31) units sold in there. The County had the opportunity to purchase three (3) units in there and we did, and we were able to. About eighteen (18) of the thirty-one (31) were sold during restricted periods, which meant that it was limited to certain income groups and those on our Affordable Housing Waitlist were given priority. I guess because of the market at that time, it was not able to be sold during those restricted periods.

Councilmember Yukimura: I think we could have negotiated something else, but that is okay. What is the market price of these units right now?

Mr. Franco: Right now, we are estimating to be between two hundred twenty-five thousand dollars (\$225,000) and two hundred fifty thousand dollars (\$250,000) as based on comparable sales, not within the project, but other property similar in the Līhu'e area. The County assessed it at two hundred thousand dollars (\$200,000) even.

Councilmember Yukimura: Thank you for your very knowledgeable answers. I appreciate it.

Council Chair Rapozo: Thank you. I have a question. Obviously, the purchase—these will be tied to a clause as well, right?

Mr. Franco: Yes. The fee simple resale will also include a twenty (20) year buyback restriction.

Council Chair Rapozo: Twenty (20) years?

Mr. Franco: Yes.

Council Chair Rapozo: I do not know if you can answer this, but let us say a two hundred thousand dollar (\$200,000) house; what income level would qualify?

Mr. Franco: We have it that a household with a median income of eighty percent (80%) of the Kaua'i Median Household can afford something in that price range. Our target is the eighty percent (80%) group, so we take that when we discuss whether or not we are going to exercise our right or recommend exercising of a right to purchase. We look at that in making sure that our target group of eighty percent (80%) is able to afford it before we even consider looking at buying it back.

Council Chair Rapozo: I think eighty percent (80%) can probably afford a lot more than two hundred thousand dollars (\$200,000).

Mr. Franco: Probably, yes.

Council Chair Rapozo: Okay, so I am trying to figure out at what percentage...

Mr. Franco: I would say that you can go up to probably one hundred twenty...

Council Chair Rapozo: No, the other way. I want to make it more affordable. Do you know what I am saying?

Mr. Franco: I would say...

Council Chair Rapozo: Just hear me out. Eighty percent (80%) median income can go to the bank today and they have a good chance of purchasing.

Mr. Franco: Correct.

Council Chair Rapozo: That is not what we want to do. We want to put people that cannot. That is what affordable housing programs do. I know Council Chair Furfaro was the gap group, but I am saying that eighty percent (80%) can go to the bank today and buy a home.

Mr. Franco: Yes.

Council Chair Rapozo: Can a sixty percent (60%) qualify for a two hundred thousand dollar (\$200,000) loan?

Mr. Franco: Possibly.

Council Chair Rapozo: Okay, and that is where I think I want my message to out. We want to put the people that cannot get a home into a home, not the people that can. We do not want to give a fully able family that can go out and buy a home to get into a home that could have been for someone that cannot. Am I making myself pretty clear?

Mr. Franco: Yes. I understand what you are saying. Our Affordable Housing Waitlist is not just limited to eighty percent (80%). We have all types of people...

Council Chair Rapozo: Yes, but we refer a lot of people there.

Mr. Franco: Yes, and they are all given the first opportunity when these become available.

Council Chair Rapozo: I guess what I am asking or suggesting is that we try to make it available to the lower income people first because I hate to see someone that has the ability to purchase a house on their own without any County assistance. This is a subsidy; no doubt about it.

Mr. Franco: Correct.

Council Chair Rapozo: The County is now purchasing this property and we are going to make it available at a low price, so I want to make sure that we put the people who need it most in homes. Thank you. I saw you run up here, so I must have said something that touched a nerve.

KANANI FU, Special Assistant to the Housing Director: Good morning. Kanani Fu with the Housing Agency. For this particular project, there is an income restriction, which is eighty percent (80%) and below.

Councilmember Hooser: Can you speak up, please?

Council Chair Rapozo: Eighty percent (80%) and below. Exactly. I am talking about eighty percent (80%) and below.

Ms. Fu: Yes, but how this person is determined to buy the home is through our Homebuyer Waitlist that we have accumulated. We go through the waitlist and qualify accordingly. There is a chance that someone who is next on the list based on lottery could potentially be the lower sixty percent (60%).

Council Chair Rapozo: So it is lottery driven?

Mr. Franco: Yes.

Ms. Fu: Yes, this particular project is lottery driven.

Council Chair Rapozo: Okay. So there is no way of...

Mr. Franco: Well, everyone that is on our list has been assigned a lottery number from the time they get on the list.

Council Chair Rapozo: Whether they are eighty percent (80%), seventy percent (70%), sixty percent (60%), or fifty percent (50%)?

Mr. Franco: Correct. It does not matter what income group they are at.

Council Chair Rapozo: Okay. Maybe we can talk later offline on how we can change that and setup the lottery where we start with the sixty percent (60%) or fifty percent (50%), and then we move up.

Mr. Franco: Okay.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: It is easy for a person with eighty percent (80%) to afford a one hundred ninety-seven thousand dollar (\$197,000) house, but how many one hundred ninety-seven thousand dollar (\$197,000) houses are there on this island for sale?

Mr. Franco: None that I know of, the way the market is going right now.

Councilmember Yukimura: Right.

Council Chair Rapozo: It is a condo, JoAnn. It is not a house.

Councilmember Yukimura: Yes, condo or dwelling. Whether it is a condo or single-family, how many of these are there for these people? To say you would not allow an eight percent (80%) person to be qualified for this does not make sense to me. This is a very limited scope we are talking here if you really look island wide.

Council Chair Rapozo: Is there a question in there, JoAnn? You will have time to discuss this and share your comments, but is there is question for either one of them?

Councilmember Yukimura: Well, I think you explained why you were concerned about the eighty percent (80%) and my question was how many houses are there available for an eighty percent (80%) person to qualify for that is for sale on the island, and your answer was?

Mr. Franco: Not much. I do not have the exact number in front of me, but based on our market analysis, there is not too many properties listed for that price range.

Councilmember Yukimura: Right. Thank you very much.

Council Chair Rapozo: Thank you. Anymore questions? If not, thank you very much. Is there anyone in the audience who wishes to testify?

Ms. Punohu: *Aloha.* My name is Anne Punohu and this is why I am here today. I agree with you, Mel. I agree with you, JoAnn. Wow, that is nice to say for once at a Council Meeting. This has been my concern for years and this is what I have been talking about the whole time and I feel like I hit a brick wall every time I bring up this issue. I brought it up many times at the Council over the years, "It is too high. It needs to be lowered." Affordable housing is not affordable on Kaua'i. Do not tell me that a home that is going up for two hundred fifty thousand dollars (\$250,000) is going to help anybody on the Affordable Housing Waitlist. Why I objected so much to what is going on in Kapa'a right now is because they are saying the same thing. Why I went against JoAnn's former bill about wanting to qualify people who were in a one million dollar (\$1,000,000) house whose kids maybe wanted to be in affordable housing; that is why I went against that bill of JoAnn's. You cannot have your cake and eat it too. We need to put low income people in housing and we need to get our affordable housing really affordable on this island or we are going to have a worker shortage on this island that is really going to make every single developer on this island very unhappy. After they build their resorts, hotels, and all of their things, they are not going to have any people to work with them because pretty soon, no one will be able to afford to live on this island unless we get more low income housing. I am going to get off my soapbox, but I am going to tell you guys clearly that this is an issue. The entire thing needs to be looked at and revamped. We need to relook at how we do our entire County Housing operations on this island completely and we need to for once and all get rid of these waitlists that are years and years, and years long, and people wait and wait, and wait. My other issue is as long as we still stay on this island that you can have a Housing and Urban Development (HUD) voucher in your hand and be disallowed to even get a rental application and they can still tell you that you cannot rent or cannot even take out an application. I will continue that until the day I go into my grave to get this Council to listen to me on that. I am here because of this number 2 item. This should be the impetuous to this new Council to move forward and finally solve our housing problems if you want to make this island fully developed and integrated. You need to take care of this first. It is your priority. Please, it would be really helpful if you would consult people like me who have been working on this issue for decades and are right in the battle. Please ask us how to revamp this system and how to make County housing really work for the real people that need it and this item. The admittance of how high and happily that JoAnn and Mel are onboard and I am hopeful that the rest of you will be onboard. Things will change on this new Council. *Aloha.*

Council Chair Rapozo:

Thank you. Anyone else wishing to testify?

"BIG BOY" KUPO: *Aloha* everybody. Happy New Year. I am sure most of you know my face. For the record, my name is "Big Boy" Kupo. Mel, I just want to say that I like your suggestion about when you think about doing lottery that we start from the lower percentage or like the sixty percent (60%) and work our way up to the higher percent. I like that. It will give people a chance with low income first chance to get a dwelling. To me, we have too many housing projects where the lower bracket people still cannot afford a home because even if it is eighty percent (80%), it is still too high. I like what you said about starting from the bottom. Fifty percent (50%)— grab those people first for affordable housing or for this complex that— Is the County purchasing it? That is my question.

Council Chair Rapozo:

The County is purchasing a property.

Mr. Kupo:

Just the property?

Council Chair Rapozo: Yes, just one.

Mr. Kupo: Okay. Anyway, that is my concern. Thank you.

Council Chair Rapozo: Thank you, "Big Boy." Are there any questions for "Big Boy?" It is always nice to see you here. Is there anyone else wishing to testify? If not, the meeting is called back to order for discussion. Mr. Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: As I listen to some of the concerns of Anne and "Big Boy," perhaps the solution is not to start with the sixty percent (60%) first; it is just to lower the level from eighty percent (80%) to sixty percent (60%). I think that is the better solution. Or maybe lower it to fifty percent (50%). If they are saying that the affordable people still cannot afford it, then that means that the percentage that we are beginning at is too high. I think we need to relook at those rules where we start and if we can give Housing that direction, it will help. If it is up to them to keep it the same as whatever the standard is and the eighty percent (80%) stays, then we are not helping those that need it the most. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I think that when you are talking about going down to sixty percent (60%), you have to know that we have to find people who can actually afford mortgages. That is the problem. If they cannot or if it is a really big stretch, they end up defaulting and it is a worse situation. You also have to look at the deeper subsidy we would have to give if we can give them affordable rentals and reach a lot of people. You have to remember what a deficit we are at in terms of people being able to access affordable housing, whether it is rental or owners. We need to look at how we use the money we have to benefit the most people who need housing. We have to look at all of those issues as well.

Council Chair Rapozo: Thank you, Councilmember Yukimura. Mr. Kualii.

Councilmember Kualii: Thank you, Mr. Chair. Just real quick, I agree with the comments of you, Mr. Chair, and also Vice Chair Kagawa, and I would just say that setting the limits lower at sixty percent (60%) would focus the universe on the people who need it the most, and then on the flipside, it forces the County to figure out a way to work with the product. The community and citizens constantly tell us that affordable housing is not affordable. We know the universe that needs it; let us focus on them instead of changing the universe to the type of homes that are available. The bigger problem is the type of homes that are available and them not being affordable. Whatever way we, as a County, through the Housing Agency, through this Council, and through this Administration; we need to focus on supporting the other side of the equation. How do we get really affordable homes built, so that that universe, the people who need it the most can benefit from it.

Council Chair Rapozo: Thank you. Mr. Hooser.

Councilmember Hooser: Just to add to the discussion, I agree that we should focus on where the greatest need is, but I think we need to remember that there are many families with two (2) income families like teachers and County workers that also cannot find an affordable house, and the percentage of their income that they are spending on housing is way out of proportion. Their needs, in many ways, are just as important. The answer is a range, a collection of portfolio, if you would; addressing the different needs. If we too much just go to one (1) segment, we have to be cautious about that. Again, develop a portfolio looking at the needs of all of the residents quite frankly. Thank you.

Council Chair Rapozo: Thank you. Are there any other comments? We were here... I think Councilmember Yukimura as well... when we saw what I would consider very comfortable people move into the project because they could not meet the income requirements that the Council set. We set certain requirements for certain number of units and they had a certain time limit to put people into those homes or condos, and when they could not, they were able to sell it at market. Or higher income people were able to purchase the properties at a lower price, which was kind of shocking, but that is just the way it was done. There is no way you can expect the developer to subsidize the homelessness issues on Kaua'i. They have to make their money as well. We have to understand as a County that when we discuss and when we talk about—Honolulu's homelessness is such a big problem right now that—in meeting with the other Councilmembers throughout the State, we all have to figure out a way, but we have to know one thing: the solution is not coming without a price; it is not coming for free. I am not sure what legislators throughout the State, State and County, think is going to happen to fix that problem, but it is not going to be free. Mr. Hooser is absolutely correct because there are needs at all levels. I am just suggesting that the higher level; higher income brackets have a much bigger opportunity than the ones in the lower bracket. The lower bracket will not even get time with the banker is what I am trying to say. They will not even get an opportunity to speak to a banker about the possibility of getting a mortgage. Does the County take the burden and say, "We bought this home for two hundred thousand dollars (\$200,000), but we are going to put it on the market for one hundred eighty-five thousand dollars (\$185,000) or one hundred seventy-five thousand dollars (\$175,000) and let the County lose twenty-five thousand dollars (\$25,000) of potential revenue, but in return, we get to put families in homes." That is the cost I am talking about. Really, when you move a family from one location into their home, it is like the fire truck scenario that the Fire Chief talked about. You buy a new truck and one drops off; you get another one for reserve. It is the same thing. When you put a family into a home, some other accommodation is freed up hopefully, and that is the trickle effect you get for putting someone in a home that normally would not have an opportunity. These are some things to think about in the New Year. With that, is there any other discussion? Thank you very much for being here, Housing.

The motion to approve C 2015-40 was then put, and unanimously carried.

C 2015-41 Communication (12/23/2014) from the Director of Liquor Control, requesting Council approval to dispose of work folders, closed contracts, and miscellaneous files; pursuant to Section 46-43, Hawai'i Revised Statutes (HRS) and Resolution No. 49-86 (1986), as amended, for the following reason:

- Kept for over seven (7) years and are no longer of use or value.

Councilmember Kagawa moved to approve C 2015-41, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? Is there anyone wishing to testify from the public? If not, next item, please.

The motion to approve C 2015-41 was then put, and unanimously carried.

Mr. Watanabe: Chair, do you want to take C 2015-42 right now?

Council Chair Rapozo: This will require an Executive Session prior to discussing it. If the members want to wait, we can wait until after Executive Session.

Councilmember Kaneshiro: I had a question on this. It is just a clarifying question. If we are going to hear it here...

Council Chair Rapozo: I think you are already recused from this matter.

Councilmember Kaneshiro: No, not from this one.

Council Chair Rapozo: Okay.

Councilmember Kaneshiro: For me, I guess my clarification is that is this just going over the general process or is there any specifics to my employment or Grove Farm because when I read it here, it is just talking about the agricultural dedication process and grading, grubbing, and stockpiling—it is talking about the process, which I feel is a general matter and something that I would be able to sit on.

Council Chair Rapozo: I believe this one is an update on the existing investigation as well. That is what we are going to be briefed on in Executive Session. I think as far as that if we are going to have a discussion on the general process, then that is fine. Is he recused from the investigation?

Mr. Watanabe: It has not come up yet.

Council Chair Rapozo: Okay. Do you plan to recuse yourself for that one?

Councilmember Kaneshiro: For that one, yes.

Council Chair Rapozo: Okay. I would say that this is connected. The Executive Session for today is for this item, so to be safe I would say... that is your call. You can speak with the County Attorney if you choose.

Councilmember Kaneshiro: So this is just to receive it to go into Executive Session?

Council Chair Rapozo: No, we are going to have some discussion. Some of the discussion I know, as Mr. Hooser has stated, does not belong in

Executive Session. It is for public consumption, which is what this item is for. However, my suggestion is that we go into Executive Session first to discuss the specifics of what is happening because I do not know and I do not think anyone here knows, and then come out to discuss the matter in the public. That would be my suggestion. At that point, we can make a determination... it is entirely up to you.

Councilmember Kaneshiro: I was going to ask the County Attorney to come up and let me know.

Council Chair Rapozo: Yes, the County Attorney is aware of what is going to be in Executive Session. I do not. He can advise you better on if in fact it reaches into this item. I believe it does.

Councilmember Kaneshiro: Should we have him come up?

Council Chair Rapozo: You can speak to him offline because it is your conflict to determine, not ours. That is something you can discuss with him. Councilmember Hooser, Councilmember Yukimura, and then Councilmember Kagawa.

Councilmember Hooser: I think you addressed my concern. I wanted to make sure that there was a public discussion.

Council Chair Rapozo: There will be a public discussion.

Councilmember Hooser: Thank you.

Council Chair Rapozo: For me, I would feel more comfortable if we have the attorney briefing first before we come out here and have to be interrupted by the County Attorney saying, "Hey, that is not appropriate." You know how that goes. Thank you. Councilmember Yukimura.

Councilmember Yukimura: If there has not been time for a request to the Ethics Board, then there is an interim decision made, but not the County Attorney or the Councilmember individually actually makes an ethics determination. This is the *kuleana* of the Ethics Board, so I presume that Councilmember Kaneshiro has made an inquiry to the Ethics Board, and then often we recuse ourselves until we get an opinion for precautionary or in an abundance of caution, we stay recused until we hear otherwise. I just want to make clear that it is not something that we decide ourselves or even the County Attorney.

Council Chair Rapozo: Well, let me explain to you how I believe it works because I have been through this so many times: it is the Member's responsibility to determine a conflict and whether they are going to disclose or recuse. Ethics will come back with a recommendation or an opinion, but at the end of the day, it is your call. It is not our call and it is not the County Attorney's call, as was stated at last week's meeting when I recused myself. He is going to give you an opinion and tell you what he believes based on the ethics law and our rules. But at the end of the day, it is up to the Member and you make that call. If you believe that it is not a conflict, then you stay in and participate. If you believe that there is a chance it might be, then you make the safe call. That is your decision and no one else's. Councilmember Kagawa.

Councilmember Kagawa: I can make a suggestion to the body that let us try and be efficient in handling this very long agenda. If we are going to go into Executive Session at 2:00 p.m., my suggestion would be that we hold off this matter until we go into Executive Session and take all of the Executive Sessions at one time, instead of taking the matter now, going into Executive Session, take a lunch break, come back and hold public hearings, hold the certificate, go through some items, and then we hit Executive Session again. Let us try and keep some order in order to get through this eighteen (18) page agenda. To me, it makes sense to try and tackle all Executive Sessions at 2:00 p.m., and then we come back and discuss whatever needs to be discussed on the floor here on this item.

Council Chair Rapozo: That is the plan, Mr. Kagawa. I was not suggesting that we go in now. It was to come to this after we do the Executive Sessions later in the afternoon.

Councilmember Kagawa: Okay.

Council Chair Rapozo: I am on the same page. Mr. Trask, did you want to come up and clarify something? With no objections, the rules are suspended.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: For the record, Mauna Kea Trask, County Attorney. I appreciate the opportunity to speak on this because I, myself, appreciate the clarification on the agenda item. The communication requests the presence of the Managing Director and County Attorney to provide the Council with an update on the Administration's fact finding/investigation and plan to address matters pertaining to the agricultural dedication process and the grading, grubbing, and stockpiling process. It looks like to me that it can pertain both to a confidential investigation currently pending, as well as a plan to address matters pertaining to general processes from agricultural dedication, and grading, grubbing, and stockpiling. I believe the clarification was made; it is two: one will be a public discussion regarding the process and the other will be an Executive Session discussion in the back. I appreciate that clarification. The second is in looking at the Kaua'i County Charter and the Code of Ethics, and I learned this from Mike Belles, that every time you have a question regarding the Charter, reread the Charter. It does not take too long, so check it out again. I looked at the relevant portions of the Charter pertaining to the Code of Ethics, Section 20.02. I believe in this case that it would be "E." "Use his official position to secure a special benefit, privilege or exemption for himself or others," as well as Section 20.04(B), disclosure and not participating in a matter when you have an interest in an organization and that that organization has a matter pending before said person. In looking at "E," it says, "The mayor, the council and the board of ethics shall be responsible for the enforcement of provisions of this article." That is an interesting statement because we all know that only the Board of Ethics has the ability to render advisory opinions, which is what is traditionally referred to as only the Board of Ethics can tell you and that is true. However, the Council is a unique facet of the County in that it is a body comprised of seven (7) different members. I was kind of thinking about that question whereas when you have an individual officer, generally it is their discretion when not to seek; however, they should really take that seriously and not avoid seeking advisory opinions. I think they should be encouraged to do so. But the Council being one (1) body comprised as seven (7) different individuals and the Council itself being in charge of enforcing the Code of Ethics, not in this

case to render an advisory opinion, but if you look at the definition to enforce, it is either to make a law, rule, et cetera, or to make sure that people do what is required. In this case, seek an advisory or possibly seek an advisory opinion. I think that Councilmember Kaneshiro is well attuned and aware of the necessity because of his outside employment to seek an advisory opinion, but I think other members of this body also may have similar issues that they should address prior to going into Executive Session and participating further. I know there are allegations made in the community about possibly Councilmember Hooser's affiliation with a nonprofit, which also if you look at the definition of "business" in the Kaua'i County Code, which also contains a supplemental code of ethics that further defines and elucidates the tenants contained in the Charter, "Business includes a corporation, a partnership, sole proprietorship, trust foundation, or any other individual organization carrying on a business whether or not operating for profit." I think that this is a very, very huge issue, and you all have a responsibility. You have been put in these seats by a majority of the people of this community to do a job. Agricultural dedication in a rural community with the type of issues that arise is a big responsibility and some of that needs to be done. I think a question is raised whereby people who are familiar with the agricultural dedication process and people who are familiar with agriculture should be involved in policy decisions. I do not think you should abdicate your duty to serve and do the job, essentially, in an abundance of caution. I think though that opinions' importance and—I do not want the process or any decisions to be doubted or contaminated by allegations or outside opinions of whether or not that was ethical or legal, or whether or not someone should have or should not have participated. The way I see it is I think this body should really consider, maybe by via majority vote, to encourage those people who may have issues existing to seek advisory opinions and defer this item and attendant items until those questions are answered. It is not going to take too long. They have forty-five (45) days to render an opinion, so I think you would be well-served maybe to defer, so that no one misses out on any information and that all of these questions can be answered and the public can have faith in the integrity of the process and do that first because you all have been put there by a lot of people who want you to be here. That was kind of my recommendation on this. I think I would go with Councilmember Kagawa's wish to do things orderly and address the agenda item because with these questions hanging out, I do not want it to contaminate with what I believe is going to be a good process.

Council Chair Rapozo: Thank you. Do you have a question or a comment? I have some comments. We can start with you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Hooser: Sure. I feel like I have kind of been blindsided here by the County Attorney talking about some people in the community are talking that I might have a conflict. I am presently on the Board of Directors of a nonprofit organization, 501(c)(3). I get no money at all, so there is no compensation as opposed to others like Councilmember Kaneshiro who works for a company that might have a conflict. The organization I am involved with is not involved in this issue. It is a 501(c)(3), so it does not lobby. It has values; I have values. Clearly, I have a bias that supports sustainable agriculture and a bias for enforcing the law, and a bias with large companies not following the law and doing certain things. That is a personal bias that I have. So just because I have values or an organization that I am involved with has values, it does not mean that there is a conflict of interest when there is no money at all on the table. I am a bit

flabbergasted by this. It is like saying, Chair, that you are head of Pop Warner, so you cannot be involved in these sports issues that are here. It does not make sense. You do not get paid for it. It is a volunteer position. The item on the table does not impact your organization at all. If there was funding for Pop Warner, then maybe.

Council Chair Rapozo: Which we never got.

Councilmember Hooser: I think to delay this discussion— it has already been delayed for several months. There is a statute of limitations on all of these items that is ticking. I believe that we should move forward with this. If the County Attorney or anyone else wants to bring this issue before the Ethics Commission, then I will abide by their decision. There is no question about that. I think this is far more complicated than it needs to be. We know what is in the investigation. I participated already. It is no secret for me. I have the file right here, so I know what that investigation is about. Unfortunately in one respect, Councilmember Kaneshiro does not know. I would suggest that he talk to the County Attorney and make his own decision, as I will. You made a decision one (1) or two (2) ago about your brother and it did not take an ethics decision to do that. It was relatively minor and you stepped outside. Councilmember Kaneshiro stepped outside in another issue. It is not rocket science. If your employer is a subject of the discussion in Executive Session, then you should not be there. I think that is the bottom line. It is fairly simple. My employer is the County Council. It is the only employer I have. Again, I will abide by the Ethics Commission, but I am clear that I have no ethical conflict in this whatsoever. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Mr. Kaneshiro.

Councilmember Kaneshiro: I only brought it up because I am kind of confused because we have the Executive Session that talk about specific things regarding an update on the Administration's fact finding and investigation. Then it also talks about the plan to address matters pertaining to the agricultural dedication process, grading, grubbing, and stockpiling process, which I think is a general matter that, for me, I think I should be able to sit on it, but I did not know where the line is if that discussion is going to take place out here or if it is going to take place in there. I do not think I should have to sit out on a discussion that is talking about the general process. I do not know any of the information on what you guys are going to talk about. It was in Executive Session before, so for me, I am not really clear on what exactly is going to be talked about and what I will be missing out on or not missing out on. I have sent letters into the Board of Ethics. I actually sent two (2) prior letters regarding the same discussion about general policies and also about my involvement with East Kaua'i Soil and Water Conservation, which I am a Director. I do not get paid, but I know that the County gives the Conservation Districts money, so I am going to get a ruling on that and how my participation is affected. I am just trying to do things right, but I know that people elected me in here knowing that I work for Grove Farm. I do a lot of stuff in the community and I think it is only fair that I not recuse myself from every single thing that I possibly can just to be safe because I think people voted me in to be here and to be a part of the conversation. For me, I am just trying to thread the needle on where I can sit in and where I cannot sit in. My question started about what is going to be discussed and whether I can be there or not.

Council Chair Rapozo: I know Mr. Chock is next, but it is no secret what this is about because when Mr. Bynum was here, it was on the overhead screen. It is not a secret; everybody knows that it is an investigation into the

agricultural dedications of Grove Farm. We know that. That is not Executive Session because it was on the board. As far as where is that line between the current investigation and the future—to me, I think Mr. Chock is the Planning Committee Chair. We can just create another posting and we have another posting for discussion on that aspect of the discussion because there is going to be some overlap. Whether or not you have a direct conflict because you work for Grove Farm—I tend to disagree with Mr. Hooser that it does not matter when you get paid or not. It makes no difference. The fact that you do not get paid does not remove you from a conflict of interest if there is a benefit to an organization. I am speaking generally, not about your organization. It does not matter. I think many Councilmembers in the past have stepped down from Board of Director's positions, whether it was Red Cross, Boys & Girls Club, and so forth, myself included, because of that. To take away that whole perception of a conflict, you just remove yourself. I am not asking you to remove yourself from Grove Farm, nor am I asking Mr. Hooser. At the end of the day, it is your decision. Mr. Chock.

Councilmember Chock: Chair, in terms of the process, I would like to see that we continue moving forward with the meeting and the Executive Session as we planned to on this agenda. For the public's perception, I would like to see us moving and getting clarification from our Ethics' Commission as well. At this juncture, like you said, it is a call right now to work out with the County Attorney. We can decide where at what point for today the need or want to step out. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: I think in terms of this particular item, there is clearly an overlap, and where there is an overlap, I think there is a conflict of interest. So where an investigation of Grove Farm is the matter, there is a conflict of interest with Councilmember Kaneshiro. It is true that he was elected by the people, but he also said during the Election that he would handle potential conflicts of interest by going to the Ethics Board, and if the Ethics Board found a conflict, he would recuse himself. One could argue that was basis on which he was elected. There needs to be an opinion from the Ethics Board in order for him to decide which way to proceed. I do think a generalized discussion that is separate from the investigation is a possibility; however, Grove Farm will be regulated by the process, so that still has to be clarified by the Board of Ethics in my opinion.

Council Chair Rapozo: The people need to understand that there are two (2) parts to this whole conflict issue: number one is disclosure, so you disclose to the public. "I work for Kaua'i Beach Resort. I am a Night Auditor at Kaua'i Beach Resort. We are discussing issues that affect property tax values of hotels and resorts." Why should I not be able to participate? Is there is direct benefit? No, you are going to raise their taxes. I guess what I am trying to say is that it is an individual member to make that call using the resources available. There is the County Attorney or the Ethics Board. I agree that if in fact you feel that there is a potential conflict that you send a letter to the Ethics Commission. In the interim, you make that decision of whether or not you are going to participate. If this body or any individual member of this body—as Councilmember Yukimura has done in the past, she files complaints against members for ethics violations. But you make your decision today based on what you believe, and if in fact the member files the complaint, then they file the complaint. That is how it works. That is why most people will say, "I will err on the side of caution, I am going to step out because I do not want any complaints against me and I do not want to deal with that." At the

end of the day, it is our individual call; our individual choice. I do not suggest that we defer this matter at all because of a potential conflict of interest. I agree that we need to move forward on this. I think we need to move forward on this. We have had the briefings in Executive Session. We all know what it is about. We scheduled this update and I want to move forward. That is Councilmember Kaneshiro's call. Mr. Kaneshiro.

Councilmember Kaneshiro: Again, just for clarification, there is a lapse in time. The thing comes out on the agenda and by the time I get my letter in to the Board of Ethics, it cannot get on the agenda in time, so of course there is a lapse. I have sent letters to the Board of Ethics and I am going to send a letter on this also. Based on the timing, they are not going to see my letter or put it on the agenda until one (1) month or two (2) away. That is why I brought it up. In respect for the Chair in wanting to move forward with the item, I was thinking of deferring it, but I will let you move the item. I will recuse myself from the Executive Session and I will go to the Board of Ethics again on this matter.

Council Chair Rapozo: Thank you. Mr. Hooser.

Councilmember Hooser: In the spirit of what you said earlier about disclosure— I said it earlier and I will say it again: the organization that the County Attorney referred to is a Hawai'i Alliance for Progressive Action. I am the President of the board. I get paid no money. It is a 501(c)(3) and that organization gets no benefit whatsoever about anything the County does. I will say that for the record. For the record, I will also say that I will prefer to have the entire conversation out here, but I do not think the County attorneys would support that. I would be fully open to Councilmember Kaneshiro having a public discussion about this and the whole world can see all of us talking about our positions. That is what I would prefer. If the County Attorney is open to that, I would suggest that we do that. This is an important issue and it would be better done in the light of day, but I suspect that for various reasons that that is probably not a good idea legally. Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: I just want to acknowledge the problem that Councilmember Kaneshiro has raised about the Ethics Board's timing and decision making because they do meet only once a month and it is difficult to get timely opinions from them, and it has made me think about the possibility of them meeting more often or having an expedited process for decision-making because it is hard. I just want to acknowledge that.

Council Chair Rapozo: Mr. Kagawa.

Councilmember Kagawa: I think we need a caption break.

Council Chair Rapozo: Yes, we do. I am looking at the clock and we are about five (5) minutes beyond the caption break. I wanted to make a decision of whether or not we are going... I was hoping to get rid of a couple of items. We will be losing Mr. Kualii for a few hours. He will be back later on this evening if we are still here. If there are no further discussions and no objections, we will move C 2015-42 to the end of the agenda after the Executive Session. Thank you. We will move forward with a caption break for ten (10) minutes, and then we will come back with C 2015-43.

There being no objections, the meeting recessed at 11:16 a.m.

The meeting reconvened at 11:26 a.m., and proceeded as follows:

(Councilmember Kualii is noted as excused at 11:26 a.m.)

Council Chair Rapozo: Clerk, can we have the next item, please?

C 2015-43 Communication (01/02/2015) from Council Chair Rapozo, requesting Council consideration of the nomination of Councilmember Kualii to fill and complete the remaining term of a National Association of Counties (NACo) Board of Director: Councilmember Kagawa moved to approve C 2015-43, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Anyone in the audience wishing to testify? If not, next item, please.

The motion to approve C 2015-43 was then put, and carried by a vote of 6:0:1 *(Councilmember Kualii was excused)*.

C 2015-44 Communication (01/06/2015) from Councilmember Yukimura, requesting Council reconsideration of Resolution No. 2015-09, a Resolution requesting the Legislature of the State of Hawai'i to amend Chapter 92, Hawai'i Revised Statutes, to allow members of a County Council to jointly attend community meetings: Councilmember Yukimura moved to receive C 2015-44 for the record, seconded by Councilmember Kagawa.

Council Chair Rapozo: Discussion? Councilmember Yukimura.

Councilmember Yukimura: Thank you. First of all, I want to acknowledge that with this communication, this is not the time to move for reconsideration, so we will do that later. I just want to explain as I do in the memorandum that we are receiving that I support the Resolution, but the Bill that was attached does not accurately reflect the Resolution in my opinion, and would allow meetings with developers because it says "informational meetings with any entity to happen" and that does not have the protection of a community meeting where everyone is at. I really want to ask your consideration of the request for reconsideration, so we can have a discussion about that issue. We can still choose to just leave it as is afterwards or we can choose to amend it and I have some amendments to prepare for your consideration. But I would like to get to that and the only way to get there is by approving motion for reconsideration.

Council Chair Rapozo: Thank you, Councilmember Yukimura. The motion to reconsider will be made at the time the Resolution is read.

Mr. Watanabe: Yes, as listed on the reconsideration.

Council Chair Rapozo: Got it. Any further discussion? If not, next item, please.

The motion to receive C 2015-44 for the record was then put, and carried by a vote of 6:0:1 *(Councilmember Kualii was excused)*.

LEGAL DOCUMENTS:

C 2015-45 Communication (01/02/2015) from the Housing Director, recommending Council approval of a conveyance by Alexander & Baldwin, LLC, of the 11.204 acre parcel situated alongside Po'ipū Road, Tax Map Key (TMK) No. (4) 2-6-004:019, Po'ipū, Kaua'i, Hawai'i, to the County of Kaua'i for the development of workforce housing, which would fulfill the housing condition for Kukui'ula Development Company (Hawai'i), LLC, contained in Section 2, Subsection 19 of Ordinance No. PM-2004-370, as amended.

- Dedication Deed

Councilmember Kagawa moved to approve C 2015-45, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you very much. Is there anyone wishing to testify on this matter? Any discussion?

Councilmember Yukimura: Yes. Could we have Kanani and Steve come forward?

Council Chair Rapozo: Okay. With no objections, the rules are suspended. Kanani, that is twice in one day up here.

There being no objections, the rules were suspended.

Councilmember Yukimura: I just want to have you confirm that this Deed has been amended to clarify that the obligations of the developer that are being fulfilled here are with respect to Section 2, Subsection 19.

Ms. Fu: Yes.

Councilmember Yukimura: So that other provisions may still be outstanding in terms of the work to procure— no, that is not the right word— to secure and arrange for affordable housing and their obligations thereon.

Ms. Fu: Yes. This Deed specifically fulfills Section 2, Subsection 19(d), Affordable Housing Ordinance.

Councilmember Yukimura: Right.

STEPHEN F. HALL, First Deputy County Attorney: First Deputy County Attorney Stephen Hall for the record. Just to concur with what Kanani just stated; if you look at page number 3 of the Dedication Deed, in number 8, there has been some amended language in there added. It went from a general provision to a more specific provision, I believe, at some of the Councilmembers' request. Instead of the general provision, it now specially states that the Grantee has fulfilled the Housing Condition contained in Section 2, Subsection 19 of Project ZA, that shall no longer be subject to the said Housing Condition. It is very specific now as to what they are being released from.

Councilmember Yukimura: Thank you very much. With that, I think we can be very happy that this Deed is before us. I want to acknowledge again

Alexander & Baldwin (A&B) and Tom Shigemoto and Kukui'ula Development for their cooperation and commitment to affordable housing.

Council Chair Rapozo: Thank you very much, Councilmember Yukimura. Any other questions for Steve or Kanani? If not, thank you. While the rules are suspended, is there anyone wishing to testify?

Ms. Punohu: My name is Anne Punohu and I would like to say that I am glad to see this happen; this item and the item right after this item. I think I just want to clarify because I am hearing a lot of "affordable housing"; however, I was under the impression that when I was one of the people to testify to make sure that we had this housing when Kukui'ula came (inaudible) that it was workforce housing. Workforce housing is not necessarily affordable housing; it is low income housing. On another front, I am hopeful to see true workforce housing come out of this development. I am very happy to see it all come to fruition, this and the next item, which is really important and I am really glad to see that happen, too. Thank you very much.

Council Chair Rapozo: Is there anyone else from the audience wishing to speak? If not, thank you. The meeting is called back to order. Further discussion? Councilmember Yukimura.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I just want to respond to Anne Punohu's comment about workforce housing. One of the things that is going to help to make this particular housing project workforce is that it is located in the heart of Po'ipū, where people can walk, bike, or only have a short, cheap, and affordable car drive to their workplaces. That is very important for workers and I appreciate the point that was made. Thank you.

Council Chair Rapozo: Thank you. Any other discussion? If not, next item, please.

The motion to approve C 2015-45 was then put, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

C 2015-46 Communication (01/02/2015) from the Housing Director, recommending Council approval of the following for utility improvements needed to complete the Rice Camp Senior Housing Project, Tax Map Key (TMK) No. (4) 3-6-004:009, Līhu'e, Kaua'i, Hawai'i:

- Grant of Easement and Conveyance of Water Facility made by and between the County of Kaua'i and Rice Camp Partners LP and the Board of Water Supply, County of Kaua'i, TMK No. (4) 3-6-004:009, for the maintenance and repair of potable water pipelines and related meters, valves, and other associated waterworks facility improvements, and appurtenances;
- Grant of Easement made by and between the County of Kaua'i and Kaua'i Island Utility Cooperative and

Hawaiian Telcom, Inc., TMK No. (4) 3-6-004:009 for the transmission of electricity and telecommunications, maintenance, repair, and operation of lines, and appurtenances;

- Grant of Easement made by and between the County of Kaua'i and The Gas Company, LLC, TMK No. (4) 3-6-004:009, for the building, constructing, repairing, maintaining, and operating of above and below ground gas piping, meter(s), tanks, and appurtenant equipment; and
- Right of Entry Agreement made by and between the County of Kaua'i and The Gas Company, LLC, TMK No. (4) 3-6-004:009, for the building, constructing, repairing, maintaining, and operating a gas storage tank, gas piping, and appurtenant equipment.

Councilmember Kagawa moved to approve C 2015-46, seconded by Councilmember Yukimura.

Council Chair Rapozo: Is there anyone in the audience wishing to testify? If not, Councilmember Yukimura.

Councilmember Yukimura: These Grants of Easements, Conveyance, and Right of Entry are just bringing us closer to the completion of Rice Camp. Kanani, please come forward.

Council Chair Rapozo: With no objections, the rules are suspended. Go ahead.

There being no objections, the rules were suspended.

Councilmember Yukimura: Thank you. It is a very exciting project. I wanted to ask Kanani if she could tell us when completion is expected.

Ms. Fu: Good morning, Council. Kanani Fu for the record with the Housing Agency. The completion of Rice Camp Senior Housing is on track to be completed in... hopefully we will have our tenants in by early March.

Councilmember Yukimura: Applications are now being accepted. Are they not?

Ms. Fu: Yes. We are currently taking applications and they are due tomorrow, the 15th, with lottery to happen on the 20th.

Councilmember Yukimura: I am really glad— I do not know if this will be shown in enough time, but perhaps The Garden Island can help us tomorrow and juts let people know that the deadline is tomorrow for applying for the elderly housing project at Rice Camp.

Ms. Fu: Yes.

Councilmember Yukimura: And they are to call the Housing Agency?

Ms. Fu: They may call our Housing Agency. They could also go online at EAH and print it out.

Councilmember Yukimura: So you can online at EAH, which is going to be the management company?

Ms. Fu: Yes, "eahhousing.org."

Councilmember Yukimura: Okay.

Ms. Fu: Our Housing number is "241-4444."

Councilmember Yukimura: Okay. Thank you, Kanani.

Ms. Fu: Thank you.

Council Chair Rapozo: Thank you. Any other questions? If not, thank you. Meeting called back to order. Further discussion? If not, next item, please.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2015-46 was then put, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

CLAIMS:

C 2015-47 Communication (12/04/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by JoAnn Garcia, Authorized Representative of RSI, Recovery Agent for L-3 Communication, and Laura Campbell, for bodily injuries, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2015-47 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

C 2015-48 Communication (12/08/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Eugene K. Jimenez, for damages to his property, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2015-48 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

C 2015-49 Communication (12/10/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Sarah Rodriguez, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2015-49 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

C 2015-50 Communication (12/17/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Jeffrey A. Craig, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2015-50 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

Council Chair Rapozo:

Thank you. Next item, please.

COMMITTEE REPORTS:

PUBLIC SAFETY COMMITTEE:

A report (No. CR-PS 2015-01) submitted by the Public Safety Committee, recommending that the following be Received for the Record:

"PS 2015-01 Communication (12/02/2014) from Committee Chair Hooser, requesting the presence of the Chief of Police, to provide a briefing on the possibility of the Kaua'i Police Department (KPD) purchasing and using "body cams" or similar recording technology. This briefing shall include the costs and availability of such technology, and the positive and negative impacts of KPD's use of such technology,"

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Chock, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2015-02) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2563 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-782, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Moana Kai and Pono Kai Seawall – \$1,600,000*),"

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Chock, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

A report (No. CR-BF 2015-03) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2564 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE

HOUSING AND COMMUNITY DEVELOPMENT REVOLVING FUND
(Housing Agency, Special Projects – \$35,877),”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Chock, and carried by a vote of 6:0:1 (Councilmember Kualii was excused).

RESOLUTION FOR RECONSIDERATION:

Resolution No. 2015-09 – RESOLUTION REQUESTING THE LEGISLATURE OF THE STATE OF HAWAI‘I TO AMEND CHAPTER 92, HAWAI‘I REVISED STATUTES, TO ALLOW MEMBERS OF A COUNTY COUNCIL TO JOINTLY ATTEND COMMUNITY MEETINGS

Council Chair Rapozo: Councilmember Yukimura, I believe you need to start with a motion to reconsider.

Councilmember Yukimura: Can we have a three (3) minute recess?

Council Chair Rapozo: You sure can.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: We will be in recess for three (3) minutes.

There being no objections, the meeting recessed at 11:40 a.m.

The meeting reconvened at 11:44 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order.
Councilmember Yukimura.

Councilmember Yukimura: Thank you, Chair, for the recess.

Councilmember Yukimura moved to reconsider Resolution No. 2015-09, seconded by Councilmember Kagawa.

Council Chair Rapozo: Thank you. Discussion, Councilmember Yukimura.

Councilmember Yukimura: The reason I am asking for reconsideration is not because I have changed my mind. I still support the Resolution and its intent that councilmembers be able to attend community meetings with more than two (2) at the meeting without violating the Sunshine Law. My problem and concern is with the attached “Exhibit A,” which is the draft bill that would go before the Legislature. If you look at the wording— does everybody have a copy of that in front of them? Is that attached? If you look at the last page of the attached Bill, the underlined portion is the amendment and it says, “Members of a county council may jointly attend and speak at a community, educational, or informational meeting or presentation of another entity, including,” so and so, but the defining words are the ones that I have just read. An informational meeting or presentation of another entity could be a developer, for example, or could be a very special interest, and in their office or somewhere where there is no public and it is not really a public meeting, there could be problems and I believe it would really violate the intention

of the Sunshine Law. I have an amendment that I would like to propose to this wording that would better define what a community meeting is to ensure that the protections of a community meeting are there. If it is okay with the Chair, we can pass it out now, but we would first have to approve this motion to reconsider, and then move to approve the Resolution, and then to amend it procedurally. That is what we have to do. The first step would be to approve this motion to reconsider.

Council Chair Rapozo: Thank you. Any further discussion?
Mr. Hooser.

Councilmember Hooser: Speaking briefly in support of Councilmember Yukimura's position, at first glance, we shall be able to attend community members together, but when relooking at the actual words, I share her concerns.

Council Chair Rapozo: Thank you. Anyone else? If not, anyone in the audience? This is on the motion to reconsider only, not the Resolution. The rules are suspended with no objections.

There being no objections, the rules were suspended.

Ms. Punohu: *Aloha.* My name is Anne Punohu and I would like to speak in favor of reconsideration of the Resolution and I will speak later on the amendment. *Aloha.*

Council Chair Rapozo: Thank you. Any other testimony? If not, the meeting is called back to order. May I have a roll call, please?

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to reconsider Resolution No. 2015-09 was then put, and carried by the following vote:

FOR RECONSIDERATION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST RECONSIDERATION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you. Just for the record, Mr. Kuali'i...

Mr. Watanabe: Mr. Kuali'i has an excused absence.

Council Chair Rapozo: Okay, so this is a six (6) member body right now?

Mr. Watanabe: Yes.

Council Chair Rapozo: Thank you. We do not have to read that?

Mr. Watanabe: No, we need to have a motion to approve Resolution No. 2015-09.

Councilmember Chock moved for adoption of Resolution No. 2015-09, seconded by Councilmember Kagawa.

Councilmember Yukimura moved to amend Resolution No. 2015-09 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Kagawa.

Council Chair Rapozo: Please have a copy available for the public because I know Anne wants to testify. Thank you.

Councilmember Yukimura: I would like to read the wording for those who are in the viewing audience. I would further amend the underlined portion as follows: "Members of a county council may jointly attend and speak at a community, educational, or informational meeting or presentation of another entity, including a legislative hearing, convention, seminar, conference, forum, debate, or community association meeting, notwithstanding subsection (e)," which is the present provision that prohibits this, "...provided that the public is invited to attend the meeting or presentation through print or broadcast news media outlets or through methods of communication that clearly demonstrate an intention that the meeting or presentation will be an event that is open to the public."

Council Chair Rapozo: Are there any further comments? If not, any other discussion? Councilmember Kagawa.

Councilmember Kagawa: As I looked at the amendment, I thought that we were trying to tie it into the Resolution, but I see that the objective was actually just to add more clarification. I thought that the other one said "community meeting" and that we were going to try and keep it consistent, but that is not what we are doing, but I still support it. I do not feel that there is any harm in the amendment, so I will still be supporting it.

Council Chair Rapozo: I think the issue was original verbiage, which would allow seven (7) or any amount of councilmembers currently not allowed to attend a meeting that was not a public meeting and that really circumvents the Sunshine Law. So this correction needs to be made and I understand what you are saying. The way I look at it is basically clarifying what a community meeting really is. Regardless, it could be a developer's meeting or a special interest group's meeting, and I agree with Councilmember Yukimura that as long as it is a public meeting, that everyone can come, that the councilmembers should be able to attend. It is like one of the stupidest laws in the world that you would not allow community representatives to attend a community meeting as a body. That is crazy. Anyway, I will be supporting this as well. Any further discussion?

Councilmember Yukimura: Will you be taking public testimony?

Council Chair Rapozo: Yes, I will be taking public testimony. I wanted the public to hear the amendment discussion before we call them up.

Councilmember Yukimura: I just want to say that I think this would clarify it for the public, otherwise we would be vulnerable to criticism and it would lessen the chances of this Bill passing in the Legislature, so I am hopeful that this clarification will increase its chance to pass and also will be in accordance with the public trust that people have given us.

Council Chair Rapozo: In my experience with the Legislature over the last few years discussing the Sunshine Law, many of them want to amend the Sunshine Law to allow more access by councilmembers to events, but no one has a political will to really do it because of the backlash. But for this one, I think it is clearly to the advantage of the community that they will have the ability to have councilmembers present at the community meetings with them. I think it is just a "win-win" for everybody. Thank you. Any more discussions? If not, the rules are suspended. Anne, you may come up.

There being no objections, the rules were suspended.

Ms. Punohu: Aloha. Anne Punohu. Can I just make one (1) suggestion? Can you just add in social media or the internet at clearly because a lot of people are getting more of their information on their iPhones, androids, Facebook accounts, et cetera? It does not specifically mention that and actually a lot of community meetings are being more publicized that way than any other way that is listed here. That is my only suggestion. At first blush, I did not like it either. I was like, "Wait, what are these guys going to try and do?" I wanted to thank Staff for clarifying it a little bit for me and I think it is really ridiculous that when we elect you to represent us and to hear our concerns that you could not come and hear our concerns. That is so dumb. Yes, I agree. That is my only suggestion. *Mahalo*.

Council Chair Rapozo: Any other members of the public wishing to testify? If not, we will call the meeting back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: May I respond?

Council Chair Rapozo: Sure.

Councilmember Yukimura: I appreciate the suggestion and actually, it is covered through "methods of communication that clearly demonstrate an intention that the meeting or presentation will be an event that is open to the public." The reason we did not allow it to stand on social media alone is because people can send out Facebook messages or E-mails to a limited audience. Radio and print media like The Garden Island cannot be limited, so that is why we felt that those two (2) traditional ways would tie it to a public meeting, but we did think about neighborhood groups that do not have money to pay for radio ads or advertising in a newspaper, so we allowed for other methods of communication. If they are ever challenged, they have to clearly demonstrate an intention that the meeting or presentation is open or will be open, so they will have a burden of proof of showing that they did not send it just to a limited audience when they use social media.

Council Chair Rapozo: Thank you. Any further discussion? If not, may I have a roll call, please.

Mr. Watanabe: We need a vote on the amendment, Chair.

Council Chair Rapozo: Yes.

The motion to amend Resolution No. 2015-09 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and carried by a vote of 6:0:1 (*Councilmember Kualii was excused*).

Council Chair Rapozo: We are back to the main motion. Any further discussion? Go ahead.

Councilmember Hooser: Real briefly, I just want to commend Councilmember Yukimura for bringing the discussion forward.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Thank you for being very vigilant and finding that. I will say though that the original Resolution and attached Bill has already been submitted, due to the efficiency of our Staff, so this will come as a second Resolution to the State Legislature. With that, roll call, please.

The motion for adoption of Resolution No. 2015-09, as amended to Resolution No. 2015-09, Draft 1, was then put and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kualii	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you very much. Next item, please.

RESOLUTIONS:

Resolution No. 2015-12 – RESOLUTION AMENDING RESOLUTION NO. 2014-39, TO AMEND THE TERM EXPIRATION DATE FOR A MAYORAL APPOINTMENT TO THE BOARD OF ETHICS (*Mary E. Tudela*): Councilmember Kagawa moved for adoption of Resolution No. 2015-12, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kualii	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-13 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BUILDING BOARD OF APPEALS (*Michael Y. Nagano – Fire Safety*): Councilmember Kagawa moved for adoption of Resolution No. 2015-13, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kualii	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-14 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF ETHICS (*Mary E. Tudela*): Councilmember Kagawa moved for adoption of Resolution No. 2015-14, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-15 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF ETHICS (*Calvin K. Murashige*): Councilmember Kagawa moved for adoption of Resolution No. 2015-15, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Discussion? Go ahead.

Councilmember Kagawa: I just want to say that I did bring up one (1) issue in my two (2) years to the Board of Ethics and we cannot find a better member to serve than Judge Murashige, so I just wanted to say this. We have an excellent head of that Board. Thank you.

Council Chair Rapozo: Thank you. Any further discussion? If not, roll call, please.

The motion for adoption of Resolution No. 2015-15 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-16 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF REVIEW (*Russell S. Kyono*): Councilmember Kagawa moved for adoption of Resolution No. 2015-16, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-17 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Richard J. Jose*): Councilmember Kagawa moved for adoption of Resolution No. 2015-17, seconded by Councilmember Chock, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
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AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-18 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (*Harold D. Brown*): Councilmember Kagawa moved for adoption of Resolution No. 2015-18, seconded by Councilmember Chock, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-19 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE POLICE COMMISSION (*Donald K. Okami, Sr.*): Councilmember Kagawa moved for adoption of Resolution No. 2015-19, seconded by Councilmember Chock, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-20 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE SALARY COMMISSION (*Charles G. King*): Councilmember Kagawa moved for adoption of Resolution No. 2015-20, seconded by Councilmember Chock, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2015-21 – RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE SALARY COMMISSION (*Camilla C. Matsumoto*): Councilmember Kagawa moved for adoption of Resolution No. 2015-21, seconded by Councilmember Chock.

Council Chair Rapozo: Mr. Kupo, you may come up for public testimony.

There being no objections, the rules were suspended.

Mr. Kupo: For the record, my name is “Big Boy” Kupo. With all of these reappointments or Resolutions being passed, I just wanted to know how someone becomes selected to sit on this board or any of the boards or appointments. How does one go about being one of these positions?

Council Chair Rapozo: Mr. Kupo, there was a time that the commissions were made up of three (3) members selected by the Mayor and three (3)

members selected by the Council, and then those six (6) members would select the seventh member. Years ago, that was changed, and now the Mayor has the sole authority to appoint all members, except for a few. I believe we have some vacancies with the Historic Preservation Commission, but to answer your question, I would suggest, and I made this comment on the floor one (1) month or so ago, those members of the public who are interested need to contact the Office of Boards & Commissions, which is at the Administration. That is handled by Paula Morikami. Can someone get me the number real quick? I will stall until somebody gets the number because I do want to broadcast the number. There are many people out there who are interested. Scott is pulling that number up right now. The Office of Boards & Commissions on the other side is the office that is in charge of recruiting, soliciting the applications, processing them, and then the Mayor makes the appointment or the nomination, and then it comes here for the Council's approval. Her number is "241-4917." I encourage and as I stated on the floor a while back— or you can E-mail the County, but send a copy to the Council Services Division as well because I am interested to know how many people and who are applying. I can tell you that in speaking with the Office of Boards & Commissions Director last week, even after that statement was made hear at the meeting, and we know that millions of people watch this, but there had been only two (2) people that have expressed interest. That is the number: 241-4917. I encourage anyone interested in serving on any one of our commissions to let that office know, so we can have their name on a list because we do have vacancies throughout the year. People leave. They do not publicize the vacancies, so let them know that you are interested.

Mr. Kupo:

Okay. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else in the audience wishing to testify? If not, the meeting is called back to order. Further discussion? If not, roll call.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2015-21 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2570) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND, HIGHWAY FUND, SOLID WASTE FUND, SEWER FUND, AND GOLF FUND (*Full Funding of OPEB Annual Required Contribution (ARC) - \$1,495,385*): Councilmember Kagawa moved for passage of Proposed Draft Bill (No. 2570) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it

thereafter be referred to the Budget & Finance Committee, seconded by Councilmember Chock, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2571) – A BILL FOR AN ORDINANCE ESTABLISHING PROCEDURES, DEVELOPMENT PLANS, AND FUTURE GROWTH AREAS FOR THE LIHU'E PLANNING DISTRICT: Councilmember Yukimura moved for passage of Proposed Draft Bill (No. 2571) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Planning Committee, seconded by Councilmember Hooser.

Council Chair Rapozo: Discussion? Councilmember Kaneshiro.

Councilmember Kaneshiro: I hate to bring it up, but I know there could be an issue or a perceived issue that I have a conflict of interest on this plan, but from my understanding, it is a plan. It does not entitle land or give a property owner a right to automatically get whatever the suggestion in the plan is. If there are no objections, I would like to be able to sit on this. I do have a letter going in to the Board of Ethics regarding this matter in particular, but they probably will not be able to hear it until... their next meeting is this Friday, which they are going to hear stuff that I sent prior, so this one will probably be on the next month's meeting. If there are no objections, I would like to sit on it.

Councilmember Chock moved to amend Proposed Draft Bill (No. 2571) on first reading, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 2, seconded by Councilmember Kagawa.

Councilmember Chock: Thank you, Chair. This is a housekeeping amendment that our Staff picked up on and it is in Section 10-5.2, "Vision and Goals." There is an *okina* on there that is backwards under "Pū'ali" and on the second page, the numbering is incorrect, so we have corrected that under Section 10-5.3.

Council Chair Rapozo: Thank you very much. Has everyone had a chance to see the amendment?

The motion to amend Proposed Draft Bill (No. 2571) on first reading as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 2 was then put, and carried by a vote of 6:0:1 (*Councilmember Kuali'i was excused*).

Council Chair Rapozo: Motion carried. Back to the main motion. Any further discussion? Councilmember Yukimura.

Councilmember Yukimura: I first want to really acknowledge and thank the Planning Department for undertaking an update of this community plan. I think the last time it was updated was in 1977 or 1978, so we are more than overdue in creating a new plan for future growth and development. Under Planning

Director Dahilig with Lea and the other staff members and SSFM, we have a plan before us, so I want to thank them. I also want to encourage members of the public, too, especially those who live in the Līhu'e area to review this plan and give us input. The public hearing now will be set for February 11th, so I hope that people will come out and give us their input. There are many big issues in this plan. Lastly, I think I heard from Councilmember Kaneshiro an inquiry as to whether we had any objections; I do not have any objections to him. Voting today is initiating the process and going to public hearing. There are some questions because Grove Farm is the major landowner in this area and the plan is dealing a lot with Grove Farm lands, but I think it is appropriate to get the Ethics Board ruling on this. It is true that while the plan designates certain Grove Farm lands for development, the actual General Plan changes and zoning are not being made in this plan; however, the plan is an official document, so it is a question that needs to have analysis and ruling.

Council Chair Rapozo: Mr. Chock.

Councilmember Chock: Thank you. I just wanted to thank the Planning Department for all of the work they have done in putting together this plan. I know this is for first reading, but I wanted to encourage Councilmembers as this moves to Committee—it is a large document. I know everyone has been briefed on it, so there are a lot of considerations. While we are not making any specific decisions on our future, there are certainly some considerations that need to be taken into our discussion as we meet. Thank you.

Council Chair Rapozo: Mr. Hooser.

Councilmember Hooser: I just have brief remarks. I also wanted to thank the Planning Department. I had an excellent briefing. The document is very clear, precise, and easy to understand. I know a lot of work has been put into it, so I appreciate that from the Planning Department. I also have no objection to Councilmember Kaneshiro participating in today's discussion, but I agree that it should be ran through the Ethics Commission, even though the maps will actually be approved at a later date, this does forward the conversation in an affirmative way, which impacts a whole lot of people in the area. Thank you.

Council Chair Rapozo: Thank you. Any further discussion? Likewise, I want to thank the Planning Department. We have been funding community plans for many years in our budget and it is nice that we finally get to see the product. This is just one (1) of two (2). We will see another one come up for the South Shore in a couple of weeks, so they have been working hard at Planning. This is an ordinance, so what we approve will be the law, and we need to understand that. I envision a very lengthy process. As much as I am an advocate for speed, I believe this process needs to be vetted out and I have already spoken with Planning that there is a great possibility that workshops will be involved in this at some point, but we will do our best to get it done as quick as possible. With that, any further discussion? Councilmember Yukimura.

Councilmember Yukimura: I want to say specifically, as you have said Chair, that we have put a lot of money into the Planning Department for the development of these community plans and at really a record speed with which they have completed the planning process. Sometimes we have taken years and it is almost like when the plan is completed, the circumstances have changed so dramatically that the plan is obsolete at the point that we have adopted it, and

here, the Planning Department has really produced in record time a plan, so we are thankful to them.

Council Chair Rapozo: Thank you. Any further discussion? If not, roll call, please.

The motion for passage of Proposed Draft Bill (No. 2571), as amended, on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Planning Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2572) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Office of the County Attorney, Special Counsel Account - \$650,000*): Councilmember Kagawa moved for passage of Proposed Draft Bill (No. 2572), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Budget & Finance Committee, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Public testimony?
Mr. Chock.

Councilmember Chock: I just wanted to note that I put a request in for a detailed cost projection on Special Counsel Retention, whether existing or new and cost projection for Consultant Services. It went out a little bit late, so we did not get a chance to get a response, but I am looking forward to that. Thank you.

Council Chair Rapozo: Thank you. Any further discussion? Again, public testimony? Seeing none, roll call.

The motion for passage of Proposed Draft Bill (No. 2572), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2573) – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE UNDER CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DECLARING A PUBLIC NUISANCE: Councilmember Hooser moved for passage of Proposed Draft Bill (No. 2573), on first

reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Public Safety Committee, seconded by Councilmember Yukimura.

Council Chair Rapozo: We have fifteen (15) minutes before lunch, so what I want to do is give Mr. Hooser an opportunity to present his Bill. Just for the public, we will reconvene at 1:30 p.m. for a public hearing, and then we have Executive Sessions at 2:00 p.m. I believe we can complete the Executive Sessions probably no longer than forty-five (45) minutes. Let us just say that we will reconvene at 3:00 p.m. to continue the discussion on this Bill, so that there is no confusion. That will give us some time for the Executive Sessions. We have fifteen (15) minutes now, Mr. Hooser. Mr. Kagawa.

Councilmember Kagawa: Just a process question. You said that we will come back to this Bill later. I think normally, we just approve on first reading, and it will go to public hearing and Committee. I feel like I see members of the Administration and public safety that may provide some information to us that may tell us that it is not a good idea to even approve it on first reading if there are objections based on valid reasons. I do not know what the intention is right now. Is our intention to try and get all of the testimony that may be against and end at 12:30 p.m., or do we plan to just take Councilmember Hooser's information first, and then break?

Councilmember Rapozo: I am not as concerned about the administrative people because we pay them until 4:30 p.m., but I am more concerned about the members of the public that may be here for the Bill. I hear what you are saying and thank you for bringing it up because that does make sense. Do we have anybody signed up to speak? Are there any members of the public that wanted to speak on the first reading Bill? No one. Okay. That makes it easy. Mr. Hooser.

Councilmember Hooser: If the intent, as we do most bills, is to pass on first reading, then I can limit my remarks to five (5) minutes or less and we can hear everybody and move on. If there is a feeling that the majority does not want to pass this on first reading, then I would need more remarks to try to get the debate, reasoning, rationale, and justification for the Bill on the table. What would be the pleasure of the Chair?

Council Chair Rapozo: Again, my concern was the members of the public that may be here to testify. Is anyone here to listen to this Bill? Okay. Mr. Hooser, why do you not just open up?

Councilmember Hooser: Okay. Thank you, Chair and Members. We had extensive testimony earlier today. I will just hit the highlights. Even though this measure seems to focus on one particular incident or just a handful on incidents, I have had other issues over the years of people saying, "Gary, can you not do something about this?" Leading up to this—for me, this was a two (2) year conversation. Chair, I think you were here when Mr. Trask sat there and we had similar situation and everybody said, "There is nothing we can do." Since that time, I have spoken to the Department of Health and many agencies, and talked to the County Attorney. At the end of the day, we came up with this. The County Attorney suggested this model. This is based on an existing law on Maui that was approved in 1949. I think that is saying something. The measure we are discussing is far narrower than the Maui issue. The Maui one actually says that "if you burn

to cause annoyance, detriment, or injury.” We took out the “annoyance” and “detriment.” Maui did not have the “intentionally, knowingly, or recklessly” clause, so we really narrowed this down, similar in many respects to a barking dog or a noise or other. This is intended to impact only the most egregious and put the burden on proving your health was harmed. It troubles me to a certain extent when people led by the Administration quite frankly, try to frame this as a cultural thing. This is not a cultural issue. Again, Maui’s one has been there since 1949. This does not take away our ability to feed ourselves as was quoted in the paper. This is about only the most egregious incidents. I am clear, Chair, that if someone is doing something in the property next door that is harming my health or the health of my mother, and they do it intentionally, that should be against the law. There is no question about it. We did talk to the County Prosecutor and he suggested additional language, which we included in this. It does say “recklessly” also, which it is not as strong as “intentionally.” If this body wanted to remove “recklessly” and make it “intentionally,” so be it. Whether this will solve the issue that was discussed this morning—I do not know, but I know that it is a reasonable attempt to deal with an issue that is front of our community. Again, it is an issue that was dealt on Maui in 1949. There is no question that as much as we all like to think about “the good old days,” smoke is not healthy. That is just the bottom line. We have lived with it. I have had fireplaces. The EPA recommendations on smoke—clearly, it is not healthy. We live in a small community or small neighborhood where the houses are right next door to each other and somebody is getting sick, and we have letters here from doctors attesting to that. I think it is very narrow. I would encourage people not to go down the path of “this is newcomers versus local residents.” That is not what this is about. This is about harming health and people, both newcomers and longtime local residents, have the same issues. They both like to have fireplaces and they both deserve to have their health protected. In a nutshell, that is the Bill. It is very simple. The key words right now are that the person has to “intentionally, knowingly, or recklessly.” This is not just fireplaces. It could be burning something else like industrial gas. It does not affect agriculture. It has nothing to do with agriculture. “In a manner as to cause injury to the health of the person”—I think that is reasonable to say that if you are doing something intentionally, knowingly or recklessly, and you are causing health harm to someone, that should be against the law and that is what this is really all about. It is not new or breaking new grounds. It is an existing law in Maui. That is all I have for now. Thank you.

Council Chair Rapozo: Thank you. Any other members?
Councilmember Yukimura.

Councilmember Yukimura: I have a question for Mr. Hooser.

Council Chair Rapozo: Sure.

Councilmember Yukimura: In this Maui law, it has been on the books for a long time, so they must have had some experience with enforcement and I just wondered how that has worked or not worked.

Councilmember Hooser: That is a very good question. I do not know if anyone has reached out to Maui, but we have not heard of anything, but we will certainly do that if they have not done it already between now and next year. It has been on the books since 1949, so if it is a big problem, it would not be on the books in my opinion; if it was abused or whatever. You may hear that this is difficult to enforce—it was intended to be difficult to enforce. It is intended to be very narrow,

not to let everybody that is burning a fire file a complaint or send somebody to jail. It is meant to be very narrow and very focused on harm to health intentionally, recklessly, or willingly.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Mr. Kaneshiro.

Councilmember Kaneshiro: I have a question on the intention because we had people come up and talk about them burning their chimney for heat, but it is affecting their neighbor. His intention is to burn the firewood in his house to warm himself up, but what is the intention... when you talk about intention, it is like if he is burning the fire specifically to hurt his neighbor, I see that intention, but if he is burning his fire to heat his house, then where is the intention of him wanting to cause harm to the neighbor?

Councilmember Hooser: That would be a question decided in court. I am sure we are going to hear that that is very difficult to decide. I would say that if someone who believes their health is harmed and has proved that their health is harm and can prove that that harm was coming from that smoke, it does not matter whether he is... and he knows it— you let him know over time. That particular fellow mentioned that it has been eighty (80) times. So if you are burning something, my health is harmed, and I notify you repeatedly that you are hurting me, then that may be “recklessly, intentionally, or willingly.” Again, that would be in court. Like most measures that proceed through this body, I am wide open to amendments to clarify— I welcome amendments from the Prosecutor’s Office, Police Department, and anybody here in the public to make this a better measure. I come back to fundamentally, if someone is doing something that harms my health and drifts over— this is like trespass. They are doing something on their property that moves into my property and causes me harm; that should be against the law. Thank you.

Council Chair Rapozo: Thank you. Mr. Kagawa.

Councilmember Kagawa: I would like to ask a question to the Prosecuting Attorney.

Council Chair Rapozo: Okay. I will suspend the rules with no objections. Mr. Kollar.

Councilmember Kagawa: First of all, I would like to thank Justin for submitting this letter. Do all members have it? Very strong points are made and what I wanted to ask you because one of the points you made was the difficulty in proving that harm is done. I have a letter from... I will not read the name... but let me read this letter and you tell me if this is proof. This is from the doctor and it says, “This patient has been seen several times over the last few years for shortness of breath, chest tightness, and feeling ill, all secondary to the exposure of smoke coming from her neighbor’s chimney. She has tried shutting windows and doors, but the exposure has already affected her. She has been seen in this office, urgent care, and the emergency room on several occasions. Apparently the smoke inhalation is the sole cause of these problems. She is rarely seen for illnesses not related to this.” This is by a medical doctor. Is this proof where you can have the police either fine the person with the chimney one thousand dollars (\$1,000) or throw him in jail for thirty (30) days. Is this proof?

There being no objections, the rules were suspended.

JUSTIN F. KOLLAR, Prosecuting Attorney: Good morning, Council Chair and Vice Chair. Justin Kollar, Prosecuting Attorney. Thank you for asking that question. That is a good question. The answer is it is evidence. Before that could be introduced as evidence in a criminal trial, we would have to put the doctor up on the witness stand. We would have to qualify the doctor as an expert witness in this area. We would have to have the doctor testify about his education, background, qualifications, and it would be up to the court to decide whether he was qualified to make that call, not just as a medical doctor, but perhaps someone who is familiar with air quality issues or the issues in that particular area as to whether that specific smoke is what caused that specific injury. There is always the chance, and lawyers say "hypotheticals," but there is always a chance that a judge could say, "Yes, that is enough. I am going to find the guy guilty." There is also a chance, and I think it is a significant chance, that it would not be enough. As you may know, it is not necessarily that difficult to get a doctor to give you a note, if that is what you are looking for. For us to put that person on the stand and qualify them as an expert witness and obtain a conviction beyond reasonable doubt, that is a lot more difficult than just saying, "I have a note for my doctor that says this smoke caused my injuries." Moreover, what is the injury? "I am bothered by the smoke. I do not like the way it smells." "I have an illness that requires me to take medication." Is this an illness that has put me out of work? Has this shortened my life expectancy? What is the harm that we are talking about here? If the harm is just, "I do not like the way it smells," the judge is going to have a hard time with that.

Councilmember Kagawa: To say it is proof is this part where it says, "Apparently, the smoke inhalation is the sole cause." So "apparently" leaves that little doubt that...

Mr. Kollar: It is qualifying language.

Councilmember Kagawa: Yes.

Mr. Kollar: That does not strengthen the case.

Councilmember Kagawa: To answer the question, would this be enough for the policemen to go out and fine the person or throw them in jail?

Mr. Kollar: For us to take that case, I would need more than that.

Councilmember Kagawa: Okay. I do not know if you wanted to comment on your letter or say anything in particular, but this letter for me was very informative.

Mr. Kollar: We submitted our testimony because we wanted to be clear about what the concerns were from our standpoint and these are concerns that I think I shared all of them with a Councilmember before. I wanted you to have the opportunity to look at those, generate your thoughts on that, and I can go through it in more detail if you want, but I am just happy to answer your questions as well.

Council Chair Rapozo: Thank you. Any more questions for the Prosecutor? Councilmember Yukimura.

Councilmember Yukimura: Hi, Justin. Do you have any information about Maui's experience in enforcing or not enforcing the law?

Mr. Kollar: I did contact the Maui Prosecutor's Office and per the Maui Prosecuting Attorney, they are not aware of any situations where it has ever been used. In fact, the person I contacted was surprised to hear that there was such a law, so I do not think it is something that they have tried to use.

Council Chair Rapozo: Any more questions?

Councilmember Hooser: Thank you for your testimony and for your earlier consultation on trying to improve the Bill. In terms of the process of this—let us say for example that I was the victim, if you would, and my mother is in the house and she is having breathing difficulties and the neighbor next door is smoking me out every day, so I would call the police and Prosecutor's Office and they would be no where because of the difficulty. Is it possible for me to go out and get multiple affidavits from doctors and/or record the smoke to provide the evidence, and then bring that evidence to the Prosecutor's Office to take the burden off the Prosecutor's Office in terms of where the smoke came from and whether or not there really is a health impact?

Mr. Kollar: Nothing is impossible and people do gather evidence on their own all the time and sometimes it is evidence we can use and sometimes it is evidence we cannot use. What I can tell you is that for us to be able to prove this case beyond a reasonable doubt in a court of law, we would need something more than, "I smell the smoke and my asthma is inflamed," or whatever the case may be. You are really going to need more than that. If you look at what we have to go through to prove a Driving Under the Influence (DUI) case, you are talking about a comprehensive regulation, a set of Hawai'i Administrative Rules that govern how you set up your instruments that you use to take medicines... measurements rather, how the officers conduct the sobriety test to detect even the initial indicators of impairment, and things like that—when you go to court on a criminal case, it is a lot more complicated than just saying, "Hey, I smell this. I am sure it was the smoke. Every time he does this, it makes me feel bad." That might get your probable cause to issue a citation, write a ticket, or generate a case, but it is not going to be enough to sustain a beyond a reasonable doubt in a court of law. That is why we try to reserve those statutes for situations where you have really got a societal harm that is taking place, rather than just trying to address one (1) particular situation that might be more of a civil litigation type of thing.

Councilmember Hooser: Just a brief follow-up, I was not talking about a smell kind of thing. If I brought letters from a respiratory therapist or more than one medical doctor—that is really what I am talking about, not just coming to you and saying, "I do not like the smell. It makes me cough kind of thing." I understand that the level of evidence has to be significant, but if I as the person being impacted wanted to take on that burden, that would be helpful, I suppose. If we assume for a second that the action was happening, that this person was intentionally, willingly, or recklessly hurting my mother or my family and I wanted to prove that...

Mr. Kollar: We cannot use the affidavits as evidence in a criminal case. You might be able to use them as evidence in a civil case if you are going to sue your neighbor and say, "Hey, you are creating a private nuisance that is affecting my property and health." The rules are a little bit different for civil procedure. You might be able to go in and file a case and file a motion for summary judgment and attach affidavits from doctors and say, "Hey, we have demonstrated that there is no genuine issue of material fact here. Rule in our favor, award damages, and we can move on," versus in a criminal case where we have to bring the doctors in and they do not want to come in because it takes time away from them treating their patients, and then we have to pay them.

Councilmember Hooser: So if the doctors were willing to come in and the costs of the doctors... yes...

Mr. Kollar: "If, if, if, if," yes.

Councilmember Hooser: Yes, there are "ifs" on both sides.

Council Chair Rapozo: Councilmember Hooser, I am going to stop there. Are you going to be available at 3:00 p.m.?

Mr. Kollar: Yes.

Council Chair Rapozo: Okay. I have some questions as well for you, but again, we have a Staff that we have to feed, as well as Councilmembers. We will be back at 1:30 p.m. Again, public hearing, which should go quick; we have a certificate, which should go quick; a 2:00 p.m. Executive Session, which we are going to do all of the Executive Sessions at the same time as you were talking about; and then we will reconvene at 3:00 p.m. for the meeting. Go ahead, Mr. Kagawa.

Councilmember Kagawa: Chair, perhaps I can help you out. We are going to be battling this issue a long time and perhaps we can tackle it in Committee after the public hearing. I am willing to support it with a lot of reservations, but I think we are going to hammer it out at 3:00 p.m. and we are going to hammer it out even more at Committee, so I think if we can hammer it one time, it would be better. What is the feeling of the members? We can take a vote if that is okay.

Council Chair Rapozo: You know me— brevity is key. For me, it is fine. I do not know what the feeling of this is. I think going back to what Mr. Hooser was saying, if there was some indication that this Bill will not be passed on first reading, then I would definitely like the discussion today. If there is general consensus that this will be advance to the public hearing, then we do not need any more discussion and let us get it to the public hearing. Mr. Hooser, I was just trying to accommodate what you were asking. There are six (6) of us here. If what you are saying that you were willing to support it to the public hearing and into a Committee, then I am okay with that.

Councilmember Kagawa: I do so with a lot of reservations based on what I am hearing, but I think hearing from the public is never a bad thing.

Council Chair Rapozo: Again, I did inform some members of the public that this would be going on after lunch, which is my only concern. But we

can address that at the time. If anything, I would ask that we recess this meeting until 3:00 p.m. Justin, you would not need to be here because I will reserve my questions for the Committee if that is okay. We will just bring it back up at 3:00 p.m. if there is any more public testimony. If not, we will do what we have to do. Is that okay?

Councilmember Kagawa: Yes.

Council Chair Rapozo: Okay. Thank you very much. We will recess this item until 3:00 p.m. and we will come back at 1:30 p.m. with the public hearings. Thank you very much.

There being no objections, the meeting recessed at 12:37 p.m.

The meeting reconvened at 2:33 p.m., and proceeded as follows:

Council Chair Rapozo: Clerk, could we have the reading of our next item, our Executive Session?

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Yes.

EXECUTIVE SESSION:

ES-776 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4) and (8) and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing and request authority to settle the case of Dustin Moises v. Department of Personnel Services, County of Kaua'i, et al., Civil No. 13-1-0209 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-777 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing and request for authority to settle the case of Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Rapozo: Jade, hold on. Let us take a vote on the first two (2) because I believe Mr. Kaneshiro is recusing himself in the third Executive Session.

Councilmember Kagawa moved to convene in Executive Session for ES-776 and ES-777, seconded by Councilmember Yukimura, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(Councilmember Kaneshiro is noted as recused at 2:38 p.m.)

ES-778 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session for Council to consult with the County Attorney regarding 1) the fact finding/investigation on three parcels of real property, Tax Map Keys (4) 3-3-018-002, (4) 3-8-004-001 and (4) 3-7-001-001, concerning each parcel's compliance with the Agricultural Dedication Ordinance and the Sediment and Erosion Control Ordinance (Grubbing, Grading and Stockpiling) and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Kagawa moved to convene in Executive Session for ES-778, seconded by Councilmember Chock, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Yukimura,	
	Rapozo	TOTAL - 5*,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL - 1,
RECUSED & NOT VOTING:	Kaneshiro	TOTAL - 1.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Hooser was noted as silent, but shall be recorded as an affirmative for the motion.)*

Council Chair Rapozo: Okay. We will reconvene in Executive Session. Thank you.

There being no objections, the meeting recessed at 2:40 p.m.

The meeting reconvened at 3:52 p.m., and proceeded as follows:

Council Chair Rapozo: Clerk, can we go back to Proposed Draft Bill (No. 2573).

Ms. Fountain-Tanigawa: Yes.

Proposed Draft Bill (No. 2573) – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE UNDER CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DECLARING A PUBLIC NUISANCE

Council Chair Rapozo: Thank you. I think we left off with public testimony, so we will go ahead and take the public testimony, and then take our action. With that, I will suspend the rules with no objections. Is there anyone in the audience wishing to testify on this?

Ms. Fountain-Tanigawa: Chair, we have two (2) registered speakers. The first registered speaker is Tina Sakamoto, followed by Arthur Brun.

Council Chair Rapozo: Thank you. Tina, please come up.

There being no objections, the rules were suspended.

TINA SAKAMOTO: Aloha, Mr. Chair and Councilmembers. Thank you for the opportunity to speak and offer testimony on this Proposed Draft Bill No. 2573. My name is Tina Sakamoto and it is my understanding that there are three (3) elements of a good law: it should be clear and understandable so it is easy to follow; it should be applied equally; and it should be enforceable. After hearing some of the testimony and dialogue this morning, it seems like there is some ambiguity in this proposed draft. Words such as “intentional, knowingly, recklessness”— I think those are all open for interpretation and it is not clear. If it is not clear, you cannot follow it. More importantly in the enforceability, I think we heard from the Prosecutor’s Office the difficulty in prosecuting a criminal case because it is a higher burden of proof. You would have more resources expended to get your expertise. There are difficulties. You would have to have more staffing. There would have to be determinations on the changing winds and actual source of the pollution. There would have to be testing for particle matter. Again, this is an enforceable issue. It appears to me that the best way to handle with this situation would be through the court system. There is arbitration and mediation. If needed, there is civil litigation, so I would urge you to kill this Bill because it fails in its clarity, it fails in enforcement, and I think it would certainly prove to be lacking inefficiency. I think it will not be effective use of the County time, resources, and this is the reason why I think it should be killed today not extended any further. Thank you.

Council Chair Rapozo: Thank you. Are there any questions for Ms. Sakamoto? If not, next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Arthur Brun.

ARTHUR BRUN: Hello, Council. I am the owner/operator of Arthur’s Smoke Meat and Night Light Rentals. Talk about a bad week. First my Cowboys lose, Oregon Ducks, and now trying to put me out of business. By anything, this is a bad Bill— bad, bad, bad. If we want to enforce it in the household through chimneys and smokestacks, then let us address that; not this overall blanket. Anybody who knows who cooks with grills knows that it is way better tasting to cook with Kiawe than it is to cook with propane. Anybody knows that and anybody can taste that. I know a business before that they were doing their smoking with Kiawe, then they moved to Puhi and they smoked with propane and they went out of business. You cannot make it. The taste is really different. We need to address that if we have an issue with these people’s houses, let them go to court and take care of the problem. Not here. We did enough bad bills here and we are costing the taxpayers way too much money to do bad legislation. We need to fix the problem; not create a bigger problem. What this is going to do is cause more division on the island, divide the people and divide the citizens. Anybody who makes *kālua*— I would rather eat it in the *imu* than out of a barrel. You can taste the difference. So please really look at this. Kill this Bill right now and get it out. If we want to do something to do with chimneys or fireplaces, let us address that and not this broad circle of bad legislation. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Hi, Arthur.

Mr. Brun: Hello.

Councilmember Yukimura: Thank you for coming. If we were to amend the Bill to narrow it down to "chimney smoke," then you would be okay with it?

Mr. Brun: I do not know if I would be okay with it, but we would address the problem that we are having right now.

Councilmember Yukimura: It would address the problem that concerns you personally and businesswise?

Mr. Brun: Yes.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Thank you. Are there any other questions? If not, thank you. Is there anyone else wishing to testify?

Mr. Westerman: Aloha, Council. Robert Westerman, Fire Chief for the County of Kaua'i. While I understand the dilemma that the families have from the health issues because I also have family members that suffer from COPD, but my issue here is an additional regulation, law that is going to be brought that we have to manage. We already have an open-burning law managed by the State and we get a lot of calls on it and we respond, and we will respond to this, but most of it is managed by somebody else outside of the Fire Department. My concern is just the extra burden that we place by adding another law that we have to somehow manage and control. I did call Maui County about their existing law and I have read their existing law. If you read it, it appears to me to be the first open-air burning law that might have ever been on the books in the State of Hawai'i. I have also asked them, "Have they ever enforced it," and they flat out told me that they did not even know it existed because the Fire Department does not respond with that in mind. They use the State open-burning laws like we do here for open fires. You know what has happened in the last year and a half, when the State changes those rules how many more people now cannot burn their rubbish. So I think as that law and those State Administrative Rules are enforced, and continue to be enforced, and maybe that is where we need to go and make the changes or put the teeth in existing laws, not add new ones. That is my concern. I have heard people say, "Well, let us send the Fire Department out there and test." That is not what we test for. We do not test for that. That is the Department of Health. When we do get the calls, we test what we can, but we do not have the same type of the test equipment that they have, so we end up calling the Department of Health to let them test the air. I just wanted to make sure that everybody understood that that is not the testing that we do. We go out and make sure it is not hazardous material, and then if we discover that it is this kind of air quality that needs to be tested, then we turn it over to the Department of Health. That is all I have. Thank you.

Council Chair Rapozo: Thank you, Chief. Mr. Chock.

Councilmember Chock: Thank you, Chief. I appreciate the testimony. For clarification, you mentioned where to focus... the possibility of where to focus or sink out teeth into an existing law.

Mr. Westerman: Yes.

Councilmember Chock: Can you repeat what you mentioned?

Mr. Westerman: Well, we have the Hawai'i Administrative Rules on open-burning.

Councilmember Chock: Right, so just in that...

Mr. Westerman: It allows for agricultural burns and other kinds of burns, so maybe that is the place that we should focus the energy on to maybe modify that or enforce that.

Councilmember Chock: Do you have any other specifics on that section?

Mr. Westerman: I am sorry, I do not have that law in memory. Daryl would have that, but he is in O'ahu at the Fire Prevention Meeting. I can get it for you. Thank you.

Councilmember Chock: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Chief, in terms of smoke that causes harm to people other than hazardous materials, do you see that being in the *kuleana* of the Department of Health?

Mr. Westerman: Yes.

Councilmember Yukimura: Okay, but your clear *kuleana* is hazardous materials.

Mr. Westerman: Right.

Councilmember Yukimura: Where does that authority come from? Is there a law that says that the Fire Department is in charge of hazardous materials?

Mr. Westerman: The Charter gives us the responsibility for emergency response and that is included in emergency response.

Councilmember Yukimura: I am sorry. The Charter gives you the responsibility for emergency response.

Mr. Westerman: Yes. Hazardous materials are part of the emergency response.

Councilmember Yukimura: Okay. Thank you very much.

Council Chair Rapozo: Any more questions for the Chief? If not, thank you very much. Anybody else wishing to testify on this matter?

ROY ASHER, Assistant Chief, Kaua'i Police Department: Good afternoon. Assistant Chief Roy Asher with the Kaua'i Police Department on behalf of Chief Perry. He was not able to make it today. He is tending to something else, so he asked me to step in. For the record, our Department is not in support of this Bill. It is going to be too hard for us to enforce, not that we do not want to enforce any particular laws, but we are not equipped to do the testing as well. I hear about

wanting to put it in the courts, but that puts a burden on us to have our officers do that documentation only for something that is not going to be enforceable. I do not know if it was clear, but working with the Prosecutor and previous Prosecutor, it was clear to me that they are not going to go through that expense of bringing in expert witnesses; not for that type of case. So it all comes down to us spinning our wheels here if we are going to do something and that is what I am representing, which is that we do not want to get into something that is not going to be enforceable.

Council Chair Rapozo: Thank you. Any questions for the Police Department? Mr. Chock.

Councilmember Chock: Thank you, Chief Asher. Have you folks had experiences with these responses or the calls or anything you can give us in terms of information and how it is progressed?

Mr. Asher: We have dealt with what everybody is alluding to, that particular conflict, if you will, in that community. Yes, we have dealt with it. There is nothing we can do for that particular person. I can understand what Mr. Hooser is trying to do, but I do not think that is the solution because from the police standpoint, there is nothing we can do. The evidence that the Prosecutor is going to want—we are not going to be able to get that. It is going to be very cumbersome for what it equates to be a misdemeanor or petty misdemeanor to spend all of that resources and man hours to make a case, and that is going to require a search warrant and so forth. We do not have that ability.

Council Chair Rapozo: Thank you. Any other questions?
Councilmember Yukimura.

Councilmember Yukimura: Hi, Chief. In your experience or the Department's experience, are these complains few and far between like in the last ten (10) years, would you say that there has been a handful like five (5) to ten (10) or there has been one (1) to three (3), in terms of complainant? I am sure that a complainant may generate a lot of complaints, but in terms of the situation, how many are there?

Mr. Asher: We had a lot about two (2) years ago when it began from the same source. Then it stopped. I am not aware of anywhere else or anyone else complaining of having that issue of fireplace causing a problem for the neighbor. I only know of one (1) case that has generated numerous complaints.

Councilmember Yukimura: Yes. Thank you.

Council Chair Rapozo: Any further questions? If not, thank you very much. Anyone else wishing to testify?

NADINE K. NAKAMURA, Managing Director: Good afternoon. Nadine Nakamura, Managing Director. Just on behalf of Mayor Carvalho, we wanted to express our concerns regarding Proposed Draft Bill No. 2573 for four (4) major reasons, and many of them have already been articulated earlier. So just real briefly: air quality monitoring and enforcement is the responsibility of the State Department of Health. Kaua'i Police Department officers, Fire Department officers, nor any other County personnel have the expertise to link air quality to the poor health of individuals. In order to establish probable cause for prosecution,

consultants and experts would need to be engaged, which will add to the cost of government. There will be unintended consequences that would prohibit activities that define Kaua'i as a rural community and its special way of life. We talked about the fireplaces, smokehouses, and all of these cultural activities that we would not want to see harmed. Although Maui has a similar law on the books, we have been told by our counterparts that this law is not enforced. So for these reasons, we believe that turning these neighborhood-type disputes into potential criminal cases is not an effective way to resolve issues and individual's use of civil remedies, including mediation, would be a much more effective and less burdensome for the taxpayers of Kaua'i.

Council Chair Rapozo: Thank you. Are there any questions for the Managing Director? If not, thank you very much. Anyone else wishing to testify? Seeing none, the meeting is called back to order. Further discussion? Mr. Hooser.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Hooser: Mr. Chair, thank you to you and all the people who took time out to testify on this today. As we all know, this is the first reading. We know a couple of things— we know that this is first reading and we know that normally a bill will go through several hearings and changes as it goes, so we know that. We know that this is an issue in our community, even if it is a limited issue, and we know some of the challenges of the Bill. As the introducer of the Bill, I know that this is not an easy decision to make in terms of the language and how we deal with this. I have been working with Staff and talked to the Health Department and they said that we clearly have the authority to regulate this. Hawai'i Revised Statutes (HRS) gives us the authority to do this. In working with Staff, I have actually come up with another way to approach this issue and when we ran it by the County Attorney, they preferred the Maui version, which we have before us. So as we move forward with the discussion, if we are looking to improve it— some of the criticisms were less limited to chimneys or wood-burning fire stoves and others were "let us make the language clear and easier to enforce," et cetera, which are all valid concerns and I think those are all things that can be worked on. I think to say that this Bill is going to change our way of life here on Kaua'i is reaching at best. It has been a law on the books on Maui since 1949 and has not, to my knowledge, put any smokehouses, "Chicken in a Barrels," or other businesses out of business. There does not seem to be a flood of people running to the police there to get them to do this. On one hand, the sky is falling, and on the other hand, this is not in use at all, even though it has been there since 1949. I would encourage everyone to look at this for what it is. This is an honest attempt to deal with a problem in our community as best we can. That is all it is. I come back to the fundamental premise that if someone is doing something next door that harms my family and burning and causing someone to get sick should be against the law. What that law looks like, who enforces that law, and what the criteria are all open to debate. I am looking forward to it and I am hopeful that my colleagues will see fit to pass this on first reading, allow the discussion to go forward, and encourage everyone, including the Administration, to temper that discussion and focus on what we are trying to accomplish; not spreading fear about changing our lifestyle here in the community because that is certainly not the case. Thank you.

Council Chair Rapozo: Thank you. Any other comments?
Mr. Kagawa.

Councilmember Kagawa: Thank you. I said earlier that I would be supportive of sending the Bill to first reading knowing that we would hear during the Committees from the various departments, public safety, and Administration about their reasons why this is not a good bill to solve the problem that we want to try and solve. Now that they have spoken, I have heard every department that we are relying on to enforce this Bill, if brought to the attention of the Administration or public safety, and all of them are telling us that it is not reasonable, not doable, does not make sense, and does not fix the problem. So the only thing I can do at this point after hearing that information is to try and kill the Bill now and let us not close our ears to the families that came up today that suffer, but to try to find a solution that actually fixes the problem and does not give them false hope that their problem will be fixed. It just does something, but it does not fix the problem. That is what is called "poor legislation." We have to be responsible to our taxpayers and make sure that when we do things, we basically do it the good way; when we do something, we do it the right way. I think the intentions of Councilmember Hooser to help these families are good intentions, not bad intentions to try and help people who have been suffering for years. The vehicle or tool that we are using to fix the problem is the wrong tool. Therefore, I will be voting "no." Thank you.

Council Chair Rapozo: Any other comments? Councilmember Yukimura.

Councilmember Yukimura: I want to thank everyone who has come today to testify both now, this afternoon and in the morning. I think as the testimony has shown, there are some real serious challenges with the Bill as drafted and it could end up that this is not the appropriate solution; however, I think killing a bill on first reading is an extraordinary action and I am not willing to take that. I would like to go through the process to have a public hearing because there may be people who expect to have a public hearing and were going to come at that time to go through the process. If after we have heard all of the testimony and looked at all of the possibilities and possible amendments, we determine that it really is not a workable solution to do an ordinance, then we can receive the Bill. But I think until we go through the process, we cannot jump to the conclusion and I think process is very important, so I will be voting for it on first reading.

Council Chair Rapozo: Thank you. Mr. Chock.

Councilmember Chock: Thank you. I want to first start by thanking Councilmember Hooser for having the courage to go down this road. I am sure he knew ahead of time what he was signing himself up for in trying to respond to these families' needs. For the same reasons Councilmember Yukimura had mentioned, I think I will be supporting it on first reading; however, I think that I am very far away from supporting it as it is currently written and would like the chance and opportunity to process this further and hear more from the community. Some of the questions that really come up for me are what has been voiced already in terms of impact. How many people is this really, truly affecting? Also, if it is worth creating another law in order to address it. I think there are many ways that we can solve an issue and that is what we are here for. If we can look at solutions together through the process, that is what I want to see happen. Who is going to enforce it? How are we going to pay for? How do we prove it? That was the question that Councilmember Kagawa brought up with the doctor's note and what kind of proof we will have in order to establish it. How do we resolve these issues? I think that I sort of agree with some of what was said, that maybe this should be done in the

court system. My hope is that we go through this and come up with the right approach to it. I am looking forward to that discussion. Thank you.

Council Chair Rapozo:

Any other comments? Mr. Kaneshiro.

Councilmember Kaneshiro: Of course, we heard a lot of concerns about it and it is not to say that we do not care about the families that are being affected by the smoke, but it is what the correct mechanism is to get the results that they need. If we pass this law, go through the trial, and cannot prove that the harm is directly related to the smoke, then we are back in the same situation. It is a matter of how do we get to a resolution that is going to satisfy everybody. We hear words like proof of harm and unenforceable intention. These things are really hard to get a grasp on as far as the amount of gray area and representation for it. Again, we have to hear the process through. Nothing usually gets killed on first reading, so I think let them handle it in Committee and we can see how it goes from there. I do not think I am on that Committee, so we shall see how it goes.

Council Chair Rapozo: Thank you. I am troubled by the State. I am really irritated and sick and tired of the State not doing their job. Mr. Hooser has been involved with this issue, just as long as everyone else on this Council who has been here for probably the last two (2) years. This family has been complaining to the State, County Council, Police Department, and Fire Department, and the State constantly comes back with an excuse memo to the County, "It is not our job." It frustrates me. It pisses me off actually because the way governmental subdivisions are created, you have this State who is supposed to be— was that a bad word? I do not think so. You have the State umbrella of protection for health, safety, and so forth, and they constantly shirk their duties or they pass it on and they punt. That irritates me when you have someone sitting at the State level office, making a lot of money to be able to tell a constituent here on Kaua'i, "Sorry, it is not our job," and you are the Clean Air Branch; you are the Department of Health. As I read this Administrative Rules— this is the State now— "prohibition of air pollution: no person including any public body shall engage in any activity that causes air pollution or allows emission of any regulated or hazardous air pollutant without first securing approval from the State." Then you go to the source— first of all, the source of any pollutant, which an air pollutant by their own definition is "anything that causes a health or safety concern or disrupts a person's comfortable lifestyle," which is what we are talking about today. "Sampling, testing, and reporting: all sampling and testing shall be made and the results calculated in accordance with the reference/methods specified by EPA, or in the absence of EPA referenced method, test procedures approved by the Director of the Department of Health. The department may conduct tests of emissions of air pollutants from any source." I do not care if it is coming from somebody's buttocks. If there is a source issue, pollutant issue, or problem a neighbor is complaining about, the Department of Health is obligated to go and investigate and enforce the law, and that is what they have not done. It frustrates me because people like Councilmember Hooser, who wants to service his constituents, cannot get the State to do their job and it ends up here in a controversial situation again that is going to cause people to be upset because the State is not doing their job. I tell you what— I am going to support this today for two (2) reasons: number one, I really want to hear from the public; number two, I want the State to be here at our Committee Meeting... whoever is in charge of the Clean Air Branch, I want them here to tell me and the public why they cannot enforce a clean air issue. With Bill No. 2491, we had those guys here from the State and they embarrassed themselves here. I want to see the Health Department come up here and tell me why they cannot come out here and test. I do not buy this

excuse, "No, fireplaces are okay, but the counties can go enforce." No, that is not what the law says. I want to hear it from them here on camera. I want them to come here and tell me why they cannot do their job to assure our communities are safe. I am going to be supporting this today. I want this to get to public hearing and to a Committee. I want to hear it from them live and in color. Really, I am tired of them shirking duties and saying, "No, it is not our job. We do not have manpower. We do not have womanpower. We do not have this. We do not have that." That is not our constituents' concern. They need to make it happen and not put the ball in our court here, so I will be supporting this today. Thank you. Mr. Kagawa.

Councilmember Kagawa: Mr. Chair, can you please have Staff include a letter to the heads in Honolulu like Gary Gill or the...

Council Chair Rapozo: Absolutely.

Councilmember Kagawa: I would not want a newcomer Air Quality Control Inspector from Kaua'i try to answer all of the tough questions here. I would rather them send their supervisor with some power.

Council Chair Rapozo: Thank you. So noted. Mr. Hooser.

Councilmember Hooser: Thank you for your remarks. For the record, I want to thank you for putting this on the agenda. We had a bit of a discussion on the rule changes about putting things on the agenda, which gives you the authority not to, but yet you did not use that authority and recognized that this deserves a discussion, so thank you for allowing that discussion. I think for the public's perspective and all of us, this is first reading and because of the Sunshine Law, we cannot have this discussion legally except for on the table, so that what this is about. Sometimes, the benefit is in the discussion and hopefully we reach a resolution that a majority or a unanimous support that deals with an issue. But if not, we have a discussion. Like you say, we hold, as best we can, State authority accountable as well. Thank you very much, Chair. I just wanted to personally offer my thanks.

Council Chair Rapozo: Thank you. We all want to do what is right, but doing what is right has to be legal as well. We have to make sure that we hold people, whether it is our own County or State officials accountable to do their jobs. As you can tell by the frustration—I can tell you that this Bill as written, I will not support, but I do believe that the concerns of the constituents are serious enough that it warrants some attention from the State. I am definitely open to hearing more and looking forward to that discussion. With that, there was a motion. Roll call, please.

The motion for passage of Proposed Draft Bill (No. 2573), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Public Safety Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kaneshiro, Yukimura,	
	Rapozo	TOTAL – 5,
AGAINST PASSAGE:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you very much. Can we go into the next one? I know we have Executive Session, but I see everyone here, so let us just get it done because it is running late. Can you read Proposed Draft Bill (No. 2574), please?

Ms. Fountain-Tanigawa: Yes.

Proposed Draft Bill (No. 2574) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Relief for the 2015 Tax Year*): Councilmember Kagawa moved for passage of Proposed Draft Bill (No. 2574), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Budget & Finance Committee, seconded by Councilmember Hooser.

Council Chair Rapozo: Any discussion? Public testimony?

Councilmember Hooser: Real quickly as introducer, I would like to talk about the purpose of this whole thing. As everyone should know, a couple of months ago, we passed a cap of two hundred fifty dollars (\$250) after large increases of various properties and outreach in community, we all huddled as the past Council and limited those increases to two hundred fifty dollars (\$250) and this is intended to take that same class of homeowners that were impacted by both the lifting of the cap, as well as the use issue and other issues. So take that same class that was affected in the last bill and say your taxes will not go up for the period that is discussed here for the 2015 tax year. Until we deal with the issue of raising the cap, unless we do something now, those same homeowners are going to have big increases again. So in my opinion, we need to freeze it like it is until we figure that out, and at the same time, the Administration will be doing its budget calculations based on revenue that they expect, is my understanding. If they do it on revenue that they expect, and then later we try to squeeze down the revenue from this, it will make budgeting very difficult. This would give the Administration a head's up ahead of time that this is the intent of the Council to freeze these taxes and they would then budget within those parameters. Otherwise, it speaks for itself. Thank you.

Council Chair Rapozo: Thank you. Any more comments before I suspend the rules? If not, the rules are suspended.

There being no objections, the rules were suspended.

SALLY A. MOTTA, Acting Director of Finance: Good afternoon. I am Sally Motta, Acting Director of Finance for the County of Kaua'i. I am testifying on behalf of Mayor Bernard P. Carvalho, Jr., regarding our concerns about Proposed Draft Bill No. 2574. This correspondence is intended to express our deepest concerns with the likely social and economic impact associated with Bill No. 2574, should it pass. First and foremost, the numerous tax reforms that have been adopted since 2008 were meant to not only bring relief to our homeowners, but also create parity between taxpayers within the same class. While the Fiscal Year 15 tax bills may have been a rude awakening for many formally capped taxpayers who have been underpaying or who were not receiving all of the tax relief measures for which they have been qualified, Fiscal Year 16 has allowed those taxpayers who were most affected to seek tax relief based on income. Extending a cap on taxes

only prolongs disparity between taxpayers within the same tax classification. Kaua'i is now near the high-end of homeowner exemptions and the low-end of tax rates for the Homestead tax class with additional relief mechanism based on income. This includes the Home Preservation Limit, low-income exemption, and the very low-income tax credit. The economic impacts of Bill No. 2574 can only be estimated at this time as Real Property Assessment has not yet completed the Assessment List for 2015, which is what we use for Fiscal Year 2016. Preliminary estimates are lost revenue of approximately one million eight hundred thousand dollars (\$1,800,000). However, the creation of the commercialized home use tax and assumption of the tax rate between the Homestead, which is currently three dollars and five cents (\$3.05), and Residential, which is six dollars and five cents (\$6.05) rates could add to that reduction in tax revenues since many taxpayers with Home Use exemptions are coming down from higher rates, such as the Vacation Rental, which was at the eight dollars and eighty-five cents (\$8.85) tax rate. Additionally, those taxpayers that took advantage of tax relief measures in 2015 could have market tax lower than their revised 2014 tax bills. Therefore, it is conceivable that Proposed Draft Bill No. 2574 could result in up to two million dollars (\$2,000,000) or more in lost revenue for Fiscal Year 16. Departments are currently preparing their budgets for Fiscal Year 16 with a target of eight million two hundred thousand dollars (\$8,200,000), which is seven percent (7%) in expense cuts. We are already doing that. In addition to invalidating their January 20th budget submittals, adding an additional one million eight hundred thousand dollars (\$1,800,000) to two million dollars (\$2,000,000) more in cuts could cripple services and/or lead to reductions in workforce. While it is true that the County lapsed fourteen million nine hundred thousand dollars (\$14,900,000) in Fiscal Year 14, it is imperative that Council consider the fact that the total change in Fund Balance was still a negative one million six hundred thousand dollars (\$1,600,000), meaning that the County moves sixteen million four hundred thousand dollars (\$16,400,000) from fund balances into the Operating Budget, but only replenish the fourteen million nine hundred thousand dollars (\$14,900,000). Moreover, a sizable amount of the budgeted funds that lapsed were for claims and liabilities that are still outstanding; therefore, these moneys, while they were not spent, will still need to be budgeted as to the liability that the County will still have for them. Due to the fact that the Bill would have a significant impact on the upcoming year's budget, we strongly encourage the Council to consider the intent of this Bill in the context of the Fiscal Year 16 Budget. When the certified Assessment List is completed, the actual impact of this proposal can be quantified and a policy discussion about the current disparity in taxes among taxpayers with properties of similar valuations due to the cap can take place, so it is the reasons that you brought up. We therefore urge the Council not to support this measure at this time and let us bring it up when we have the information that we need. Thank you.

Council Chair Rapozo: Thank you. Does anyone have questions?
Go ahead, Mr. Hooser.

Councilmember Hooser: So the Bill proposed does not reduce taxes for homeowners. So you are clear on that, right?

Ms. Motta: It is going to be capping them to what they were.

Councilmember Hooser: Right. So all the Bill does is prevent people that live in their homes getting the homeowner's exemption from having their taxes raised.

Ms. Motta: Only some.

Councilmember Hooser: The ones that were impacted before by the removal of the cap.

Ms. Motta: Correct.

Councilmember Hooser: Right. In my mind, and correct me if I am wrong, the income coming in is the same as it was in 2014 from...

Ms. Motta: No.

Councilmember Hooser: On this freeze; this is freezing people's taxes, so that segment will not increase.

Ms. Motta: Okay. The amounts that you are talking about were in our original budget considered to be part of our revenue. You passed an ordinance, which lowered that and we had to come up with the funds for that. So it did have an impact on our budget.

Councilmember Hooser: Right, and you did that. You made it work. The intent is again to keep the room from filling up full of people who were impacted by the removal of the cap in the year's tax and to encourage the Administration to work within the budget that the income that is here. You still have the hotel tax and you still have all of the other classifications. This just freezes one (1) classification; one (1) group, and prevents additional increases. My concern is that you will move forward with your budget process based on the increased taxes because without this freeze, these property owners will incur a tax increase.

Ms. Motta: Not necessarily. Again, we have offered other programs that they are able to take advantage of and they are taking advantage of.

Councilmember Hooser: Okay. That would not be a problem then, so this is meant to stop increases. If they take advantage of those other issues, that is okay, too. What I do not want to see is the Council now having to deal with trimming the budget to bring into line these problems that have never been resolved. The problems have never been resolved, as far as I know, with the removal of the cap and the change of use issues that emerged six (6) to eight (8) months ago. Thank you.

STEVEN A. HUNT, Real Property Tax Manager: Steve Hunt, Tax Manager, for the record. Those that were most dramatically impacted by the removal of the cap were those that did not have the means to pay the taxes. There were people that were impacted that had well within the means that are still going to be benefitting from a bill like this. Because of the relief measures that were offered between the new very low-income credit; the income exemption, programs that some taxpayers were unaware of; those people have now come in. I cannot say all of them, but many of them have come in and we are going to be seeing reduced taxes because they are now benefitting from those programs. We do have potentially lower revenue than the cap 14 because they are now benefitting fully from those programs, so it is lost revenue. Meanwhile, this Bill would perpetrate the disparity

between some of those taxpayers that can afford, that have not from an income perspective, been able to show that they need those benefits. That is a concern I have. From a budgetary standpoint, we did have a preliminary estimate that was about eight million two hundred thousand dollars (\$8,200,000) shy, which we are working towards cutting. This would be about another one million eight hundred thousand dollars (\$1,800,000) to two million dollars (\$2,000,000) in additional cuts that would have to be factored in to everyone's budgets, and frankly, we are having a very difficult time meeting our eight million two hundred thousand dollar (\$8,200,000) in cuts, so that would be an added cut. If I am not mistaken, last year when we came in with some revenue enhancement bills, including Solid Waste tipping fees and vehicle weight fees, the response from Council was that we want to hear this in context of the budget and I think it would be very prudent to see where the budget numbers lay before we come out and make an assertion that this is a hardline and that we cannot go above this because it really restricts what we can do and it puts a lot of pressure on potentially other tax rates. That is my concern.

Councilmember Hooser: I will hold off for now.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: So my understanding is that when we remove the cap and tried to adjust the taxes, so that there was more equity among comparable properties, some people's taxes went up, but others went down. In order to really keep the budget from falling apart from the losses that we incurred from those property owners who were paying much higher than others of comparable property, we had to have those who were paying very low come up. So you have to have the plus and minus to be equal, but this would perpetrate the minus without having a plus. Is that correct?

Mr. Hunt: It would. In short, we use the Fund Balance to subsidize the raise that we were trying to bring up to bring parity and we did that for one (1) year, and I understand because some people were caught off guard and it was a shock.

Councilmember Yukimura: You mean with the relief measure.

Mr. Hunt: Correct. The credits that were given in the cap at only a two hundred fifty dollar (\$250) increase prior to your tax bill. I understand because maybe no one got the word and they were not prepared for that. People have had time to prepare now. They have had a chance to come in and file for a relief measure. Again, targeted relief is on need. I really do not like the blanket approach that everyone gets it because when I started looking at the relief that was being distributed; the lion's share was going to a handful of people and looking through the list, most of those could not afford to pay it. I think the anticipation is out there that now they have seen; they were billed once for it and they got some relief this year, so they should be prepared. They either have all of their relief mechanisms they now have or can get or they are prepared for next year's bill. Or if there is a change in rate or something that softens that, it should be equal and fair to everyone; not having a portion with the same value, same class paying more, and some paying less, especially when they have improved on an income basis that they need that relief. That is the concern I have with the bill.

Councilmember Yukimura: Okay. Councilmember Hooser has I think really focused on the fact that we do not have a balanced budget from a long-term

viewpoint that our expenditures are exceeding revenues. Would this Bill not aggravate that situation and increase the disparity between expenditures and revenues?

Mr. Hunt: Again, part of that is balancing the budget itself. If this Bill were to pass in advance of the budget or concurrent with the budget, we are now looking at another round of cuts or looking at other ways to raise, but I do not...

Councilmember Yukimura: These are cuts upon cuts?

Mr. Hunt: Cuts that are already being asked. I think to put it in context, for Fiscal Year 15 Governmental Accounting Standards Boards (GASB) 68 is now requiring all jurisdictions to report their unfunded liabilities. Although we have been short on keeping large fund balances, other Counties have not been funding their liabilities for health retirees and that is going to be a concern coming forward, so it is a balance. My concern is if we take advantage of not fully funding Other Post-Employment Benefits (OPEB) and we do not have fund balances, at least we were able to say we have been using that money to fund our obligation in the Employer-Union Health Benefits Trust Fund (EUTF), so when we start getting the Fiscal Year '15 Comprehensive Annual Financial Reports (CAFRs) and the rating agency start looking at unfunded liabilities, we are going to have a nice blend between, "Yes, we were a little thin on the reserve and we are working on a plan to get there." We are stopping the erosion of Fund Balance because this year we only drew about one million six hundred thousand dollars (\$1,600,000) down, whereas in prior years it had been fourteen million dollars (\$14,000,000) and twelve million dollars (\$12,000,000). So we are getting close to having that balanced budget where revenues and expenditures were no longer eating Fund Balance, but I would be concerned if all of a sudden we cut revenue and we cannot make the appropriate cut and expense and we are looking at OPEB to balance the budget. That could be a big mistake and hurt us on the credit rating, especially when we are looking at landfill and other things that we are going to need to go out for bond issuance.

Councilmember Yukimura: What I am hearing you say is that one of the impacts of this Bill could be to force us to "kick the can down the road" on some of those funds that we should, if we are to be responsible budgeters—we need to keep fully paid. Thank you.

Council Chair Rapozo: Mr. Kagawa.

Councilmember Kagawa: How much is our Fund Balance today?

Mr. Hunt: Thirty million dollars (\$30,000,000) or something total, Committed Restricted and Unassigned. The Unassigned is really what I consider available.

Councilmember Kagawa: Okay. How much is Unassigned?

Mr. Hunt: Unassigned is fourteen million nine hundred thousand dollars (\$14,900,000).

Councilmember Kagawa: Fourteen million nine hundred thousand dollars (\$14,900,000)?

Mr. Hunt: Yes.

Councilmember Kagawa: Our expected salary increases are nine million dollars (\$9,000,000), not including the Administration request?

Mr. Hunt: Approximately.

Councilmember Kagawa: So if we come with a balanced budget and you add the nine million dollars (\$9,000,000), we still have five million dollars (\$5,000,000) left if we are given the same revenues as last year?

Mr. Hunt: Yes, but my concern is that we have drawn down from other funds this year. For Fiscal Year to balance, we have tapped out some of the other funds in the budget because what you are looking at is Fiscal Year 14, right? We have already taken the funds from Fiscal Year 14 and assigned them to Fiscal Year 15, so you will see the Committed and Assigned. We have already taken some of that and committed it.

Councilmember Kagawa: This is what kind of troubles me about what we hear here and what we hear during the budget is last year when I went after aggressive cuts during the budget, I was told by you folks and some of the other members on the Council that our lapse amount will be much smaller this year. We are much closer to actuals and the CAFR shows that we have fourteen million nine hundred thousand dollars (\$14,900,000), so we could have gone with more aggressive cuts. I see in your statement here that you say "a sizeable amount of the budgeted moneys that lapsed were for claims and liabilities." What is "sizeable?" Do we know?

Mr. Hunt: Puhi Metals was about one million one hundred thousand dollars (\$1,100,000) lapse out of the one million three hundred thousand dollars (\$1,300,000).

Councilmember Kagawa: What else? Sizeable is like half. Anyway, fourteen million nine hundred thousand dollars (\$14,900,000) minus one million one hundred thousand dollars (\$1,100,000). What else?

Mr. Hunt: Then claims and liabilities, which are moneys that we anticipate settlement for, we budgeted eight hundred thousand dollars (\$800,000). I do not recall offhand how much it was. We lapsed several hundred thousand dollars though.

Councilmember Kagawa: That is it?

Mr. Hunt: Those are two (2)...

Councilmember Kagawa: When you say "a sizeable amount of the budgeted moneys that lapsed were for claims and liabilities that were still outstanding"—so how much of the claims and liabilities that are outstanding? Therefore, these moneys while not spent, still were to be budgeted. How much is actual surplus out of the fourteen million nine hundred thousand dollars (\$14,900,000)?

Mr. Hunt: I do not know. I would have to research with each department what of the lapsed moneys is still basically considered a liability to them in terms of an ongoing cost or event that needs to be paid for. I would have to get back to you.

Councilmember Kagawa: Okay. I just want to make sure that when we say "the lapse amount is basically on paper there, but it is a sizable amount." What is sizable? I want to see numbers. I do not want to just see words.

Mr. Hunt: I think the biggest way I can put this in context is the budget we submit, we borrowed from our savings account. We rolled over into. We did not have revenues sufficient to cover our expenditures, so we rolled over sixteen million four hundred thousand dollars (\$16,400,000) and we returned back fourteen million nine hundred thousand dollars (\$14,900,000), so we really only needed to roll over one million six hundred thousand dollars (\$1,600,000) in savings at the end of the day. We over estimated what we needed to cover our expenditures by hopefully controlling costs, which we tried to do.

Councilmember Kagawa: Okay, but you are saying that even though out of the fourteen million nine hundred thousand dollars (\$14,900,000), a sizable amount are moneys that...

Mr. Hunt: That still may need to be expended in the future.

Councilmember Kagawa: Yes, so I just want to know how much of that is out there and if you need more time... if you can give me a response at some point. Thank you. Thank you, Chair.

Council Chair Rapozo: Mr. Chock.

Councilmember Chock: When it comes to the Proposed Draft Bill, I think that the fear around the table here is what we are going to expect because some people got fifty percent (50%) or they are saying thirty percent (30%) increases, and that is why we had to respond to it as we did last year. It is difficult, I think, for us to not look for a solution early on in order to address that as it is forthcoming where we are going to be in the same situation. Kind of what I think might be helpful, and I know this has always been, "Well, we cannot get that information," but we have to figure out how we can start to project who is going to be affected and how, so that we can maybe make incremental steps, so people who are going to be affected with a large percentage increase, we can at least address them. I understand your regard for not wanting a blanket approach, but I am thankful for the discussion that we might be able to look for a solution that is somewhere in between.

Council Chair Rapozo: Mr. Hooser.

Councilmember Hooser: Thank you for the discussion. Part of what this Bill is about is having a discussion now rather than later. If we are going to have to cut or raise taxes, I would rather the Administration make those choices before it gets to us, so I would like that budgeting to be done as constrained as possible. Councilmember Yukimura framed it "this would exacerbate the problem," and I would frame it, "this would force the Administration to balance the budget on taxing other than the homeowner exemption properties and/or cutting costs." We

still have the ability to raise revenues, but just not on homeowners and cut costs. In my opinion, it helps guide the management, rather than us try to do it like we did before when we were like “we will try to kill overtime.” You guys are in the best position to do that. That is what I would like to see. During that tax discussion that we had, it was said repeatedly, “Well, we have to fix this.” We have not fixed anything. We are just kicking the can down the road and we take that ceiling away, and then we do not know what is going to happen. (Inaudible). Just because one (1) or two (2) people or a small group of people are getting away with paying less—I do not think it is a reason to lift this type of cap. I would rather protect the homeowners and budget within our means without raising taxes. I am sorry because there should have been a question, so do you have any thoughts on that?

Mr. Hunt: I do not want to repeat myself, but again, I think the biggest concern that I have is the disparity between homeowners. I think targeted income—if someone can come in and prove on an income basis that they need relief, then it is warranted. But when we already have some of the highest exemptions and some of the lower property tax rates; is that the penalty that you are going up to market value with some of the lowest rates and highest exemptions? It does not seem fair that certain people are going to benefit that do not need the benefit and we are just drawing a hard line and capping. That is the problem I have.

Council Chair Rapozo: Thank you. Are there any other questions? If not, the meeting is called back to order. As I see no one else here in the audience today, except the media, and I do not think he wants to testify. Further discussion? Go ahead, Mr. Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you, Chair. I do not know if I heard Steve properly at the beginning, but I do not know if this is perhaps “pushing the cart before the horse.” We definitely are going to have a tough budget coming up and I would not want to I guess play our hand before the game. I think the discussion will never be a bad thing about the upcoming budget about our potential for reducing real property taxes or increasing other areas. So I am going to be supportive on first reading, but I remember when Chair Furfaro got so frustrated with the amendments that we were making—I think the intention was when they lifted the cap that we were just going to say, “This is the fair way. This is how taxpayers are going to have to basically suck it up. Whatever their bill is, it is fair.” We came with numerous amendments and Chair Furfaro termed it “the mummy.” As our leader, he told us that he is kind of worried that we have to go more towards tax reform and get away from putting band-aids on little problems here and there. I hear some of the members say that we just have to suck it up and do not use any band-aids, but certainly, some of these jumps do not seem fair. They seem quite unreasonable. Like when Ms. Lopez came up and said how that was going to put her family in jeopardy, whether they can hold on to the property? We had Mr. Palmeira, the elderly man, who—because there is that disparity. If you do not have that three dollar (\$3) rate and you have that six dollar (\$6) rate—if you go *ad valorem*, you are paying through your nose. If you do not have any large rental income coming in, it could become troublesome, whether you can keep it. I had hoped that we would be headed to more tax reform. Maybe now that Steve is just Real Property Tax, maybe we can work towards relooking at some type of Real Property Tax reform and maybe it will be close to the *ad valorem* method, but some

kind of method that gets away from having that large disparity between just local homeowners, who some have that extra house, but it is not really rich, local homeowners and like we saw when they came up and complained, and it basically threatened to put them out of their homes. I think Councilmember Hooser's amendment will definitely not give them the shock that we want to try and avoid. I think people can handle two hundred fifty dollars (\$250); that much higher. Certainly in the long-term, we have to go with some kind of tax reform where we do not have to keep putting these band-aids on. I hope we can get to that point at some point in the near future. Thank you.

Councilmember Chock: For the same reasons as the last bill, I will be supporting this on first reading. One of the takeaways— because I think that everyone who came up here, we addressed. Anyone who called in to the office, we addressed. So I think that there is a lot of work that took place in trying to alleviate people's needs, but the fact is that we do not know exactly across the board how we have made a difference. We have no report or no projections to tell how we are moving forward, so that needs to be done. I know I did not pose a question, but my question would be for us to get some feedback in terms of where we are and how we have addressed people, and what we project seeing in terms of how it is going to affect people moving forward with the current system we have. I like the talks that we have started about tax reform and I have been asking the question... I think I asked it daily. There is just no real direction. Again, I thank Councilmember Hooser for bringing it up because sometimes you just have to get it kick started and I am glad it is early. Thank you.

Councilmember Yukimura: I actually have another question for Steve or Sally. I will speak it as he is coming up. One of my concerns about this Bill is what it does to the ongoing budgeting process because this creates a much greater uncertainty in terms of revenue because you do not know whether this Bill will pass or not, and it will affect the revenues for the next fiscal year. Will it not?

Council Chair Rapozo: I will suspend the rules. Go ahead.

There being no objections, the rules were suspended.

Mr. Hunt: Thank you, Chair. Yes, it will create... we can make some hypotheses that it is going to pass and factor that in, and if it does not, we have extra. We are struggling to make the first round of cuts and this is going to add pressure to that.

Councilmember Yukimura: And you have two and a half (2.5) or maybe two (2) months before the budget has to be presented to us, right? March 13th.

Mr. Hunt: I believe we are actually looking at departments right now submitting their preliminary budget numbers by the 20th of the month. There may be some refinements if they do not meet their cuts and figure out how we are going to push stuff around. We are working on it now and this would add to that that they are not prepared for it at the moment.

Councilmember Yukimura: Yes. That is what really concerns me. I just wanted to get clear about how this Proposed Draft Bill would impact the present budgeting process.

Mr. Hunt: I cannot one hundred percent (100%) speak for the Administration, but I believe the directive was essentially not to touch tax rates in any category this year, so we are going with that premise. Obviously if this was a cut, we would have to reconsider that and look at other categories if we cannot make those cuts to offset that additional one million eight hundred thousand dollars (\$1,800,000) to two million dollars (\$2,000,000).

Councilmember Yukimura: I do not know— there seems to be an unbalanced focus on cuts when we are a growing community that has to address some really critical upcoming issues like traffic congestion, park expansion, and solid waste, et cetera. I do not think it is just a matter of finding cuts. Thank you.

Council Chair Rapozo: Thank you. Questions? If not, the meeting is called back to order. Mr. Hooser.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Hooser: Just real briefly; I have already spoken a lot on this. I think Councilmember Kagawa kind of framed it well when he talked about the need for reform. That is really what we should be looking at, which are the disparities that are being talked about. Let us find those and let us fix those. We can do that. We can pass a bill like this to protect homeowners, and then we can work on the system, look for inequalities and things that need to be fixed, and fix them, and we do not have to have a perpetual freeze on this. We or I feel like I got burned this last time around in terms of unintended consequences or unforeseen consequences. People were arguing, "Well, you knew what was coming." But we had consequences that I do not think we expected and I do not want to see that again. I would like the budget to be balanced without increasing property taxes on homeowners; the rates or the amount they are paying. Whatever people paid last year, let us let them pay the same thing and they can balance the budget. If they want to raise taxes or if we have to raise taxes or revenue on other categories, then we can look at that. But owner-occupied homeowner exemption properties, I think, should be given a break and we should balance the budget within those confines. I would rather see the Administration balance it now, rather than give it to us, and then we have to figure out how to find that one million eight hundred thousand dollars (\$1,800,000) or whatever, which is really difficult. They are in the best position to balance the budget. We need to protect homeowners and I think this is real important to force— it really is about forcing a discussion and coming up with a balanced budget at the end of the day and not keep spending reserves. I know we have critical services and if we need to raise revenues, let us raise them, but let us not do it on the backs of homeowners. Thank you.

Council Chair Rapozo: Thank you. Mr. Kaneshiro.

Councilmember Kaneshiro: I am open to the discussion, but for me, it is kind of premature for us to be able to decide on something like this without having seen the budget. With that being said, even just putting a cap on increases still does not take into consideration if the assessed value of the house increased next year, then they would be getting an even further savings. If the Administration is going to say "no rate increases," but if assessed values of houses go up, then real property taxes will go up a little. If we are saying that we are only going to cap it on these guys, then values for other homes are going to go up because of assessed value of the house. Then it creates a greater discrepancy again, which I think what you

wanted to accomplish with taking away cap was trying to make it fairer. For me, I am open to the discussion. But again, taxes are taxes; what is fair is fair. It comes down to "will you able to pay it" and we do have resources, as Steve mentioned as far as income based relief. If the taxes are too high, they can go in and see Steve for any exemptions. There is income based relief also. I am open to the discussion. We will see how it goes, but for me, it is really premature to be able to make a decision on this without seeing the budget.

Council Chair Rapozo: Anyone else? Councilmember Yukimura.

Councilmember Yukimura: Actually, the reasons for voting against this Bill on first reading are more compelling in this case than in the last case for me, but I will go with my general principle of allowing the bill to go through the process of public hearing, et cetera. I really feel like we have done tax reform and put it on what is on an appropriate basis, which is *ad valorem* with some modifications based on ability to pay. If we are going to change that system, which has been quite deliberately and carefully crafted, there is a big burden of proof to show that you can find a system that is better. So I would rather that we keep the status quo, rather than put anything back. We keep what we have now and go through a tax reform process, which should take from six (6) to twelve (12) months at the least. If we come up with something better, then we make the changes, but I think we have done so much work to try to bring equity, adequate revenues, proper criteria, and very creative thinking about this process to meet multiple goals. As I have said before, I think we are moving in the right direction. Over the last year, we have found out where we needed to make adjustments, so I would not make major changes until we are sure that there is a better system than what we have.

Councilmember Hooser: Just real briefly, it is an open question, so we do not have to call up the Administration, but it is my understanding that the testimony says that there is one million eight hundred thousand dollars (\$1,800,000) to two million dollars (\$2,000,000) of revenue that is impacted. During this last discussion we had one (1) year ago or so, we had charts and graphs showing who was impacted. Basically, I think what they are saying is that the homeowners in this group will pay one million eight hundred thousand dollars (\$1,800,000) to two million dollars (\$2,000,000) more in 2015 than they are paying now, at the end of the day. Is that coming out of one hundred (100) houses or five hundred (500)? That kind of breakdown would help us analyze, I think, the impacts here. Basically, we are saying that if we do not do this, these homeowners' taxes will increase by two million dollars (\$2,000,000). How do you measure that? What is the average or the mean and that kind of thing? So maybe if the Administration during the public hearing or as we move forward can provide that information.

Council Chair Rapozo: Yes. We will make the request for the Committee.

Councilmember Hooser: Yes, because it equates to a two million dollar (\$2,000,000) tax increase.

Council Chair Rapozo: Are you keeping count of how many times we are talking? Who is done?

Councilmember Yukimura: I was just going to raise a point of order.

Council Chair Rapozo: Okay, go ahead and raise your point.

Councilmember Yukimura: Not to cause any limitation on people speaking, but I believe several people have spoken more than two (2) times on the discussion, and to me, it just proves my point that we need to be able to speak...

Council Chair Rapozo: I am not sure. Who spoke more than twice? Did anybody speak more than twice? I am not talking about questions when the resource people are up here. I am talking about when we are in discussion. Did anybody speak more than twice? Thank you. I am counting, Councilmember Yukimura. When you are asking questions, that is not counting against your time. So you made a comment making me look bad, so I am going to correct the record that in fact I am sticking by the rule. Under my count, Councilmember Yukimura has spoken twice on the discussion.

Councilmember Yukimura: I do not deny that.

Council Chair Rapozo: Okay, we are moving on. Anyone else?

Councilmember Kagawa: I want to be really quick. When you look at it, the two hundred fifty dollars (\$250) does some good because it gets them to where they should be, but not all at one time. We are working our way up to where they should be, but we are controlling it. I think if you look at it that way, I think then it does not sound as bad. So what we are really doing is accepting any increase and giving any decrease that is deserved, but we are just taking the increases two hundred fifty dollars (\$250) per year at a time, and not shocking them with a two thousand dollar (\$2,000) increase at once. So in four (4) years or five (5) years, they will get up to where they should be. I think for now until I see a better plan, I am inclined to kind of support this type of legislation, unless we do something that really shows me that everything is fair. I have not seen that up to this point that everything is fair just *ad valorem* with the exemptions. Thank you, Chair.

Council Chair Rapozo: Thank you. Anyone else? I will just say that again, this is first reading and a lot of this discussion will be had in the Committee. However, I think the question Councilmember Yukimura asked, "What happens to the budgeting process for the Administration when we have a bill like this?" I think the Administration has to assume that the bill is going to pass and you budget accordingly. Then if, in fact, it does not, then you... you almost have to prioritize your departments' budgets and say what is absolutely needed to have. It is the only way I can see how you do this. Last year, we got stuck in the situation where the Administration had assumed that the bills were passed and they had expected that revenue and some of the bills did not pass. Then we ended up now putting the Council in a position where it is almost like extortion, "Hey, you have to pass this or we are going to take back services from the public." So we need to get that ahead of time. You have to assume the worst and hope for the best. It is a horrible way of putting it, but that is the way it is. As far as reform, we have a new Budget Chair now that I am going to task with getting the dialogue started. When will this reform begin? Are we actually moving forward to some productive tax reform? That needs to be done sooner than later. The removal of the cap— much of the argument that Councilmember Kagawa and I had was exactly what has happened. We said, "Take some time. Let us look at this whole thing and let us not rush into this because we do not know what is going to happen." We are today where Ross and I said we would be and now we are trying to fix all of that with what we had in place back then. What I am saying is that reform is necessary; no doubt about it; reform is necessary and we need to start moving on that. In the interim, we have to

figure out a way that we can keep things fair, as Mr. Kagawa has said, as well as provide the resources for the Administration to operate this County.

Councilmember Yukimura: Mr. Chair?

Council Chair Rapozo: Yes.

Councilmember Yukimura: I would like an exception to speak for the third time.

Council Chair Rapozo: What do you have to say, JoAnn? This is first reading, JoAnn.

Councilmember Yukimura: Yes.

Council Chair Rapozo: Why do you put me in a position like that?

Councilmember Yukimura: You said you would make the judgment calls and that we could trust you.

Council Chair Rapozo: Yes, not on this. I said that on people speaking before the meeting that...

Councilmember Yukimura: I think it was on rules in general.

Council Chair Rapozo: Do you see what I have to put up with? Go ahead, Councilmember Yukimura.

Councilmember Yukimura: Thank you. I want to say that the slow proposal, the gradual proposal, to remove the cap— and I do not even know what that means— would not work because the gap keeps growing, especially in an economy where the real property continues to appreciate. I think we are not where it was predicted. We are in a much better place and we are in the danger of going back to the cap, and then making the discrepancies continue to grow. Then it makes it harder to remove the cap. So to reverse our removal of the cap is very, very dangerous.

Council Chair Rapozo: Thank you very much. Roll call, please.

The motion for passage of Proposed Draft Bill (No. 2574), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 11, 2015, and that it thereafter be referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you very much. I have a suggestion or a proposal to the body. We have three (3) Bills for second reading, which I do not anticipate any problems, an Executive Session that we need to get through, and that open session matter. I would ask that we do the Executive Session matter

today and that we refer the open session matter to the Committee of the Whole next week, if that is okay. We have a light agenda next week for the Committee Meetings, so we will have a lot of time. That is just a suggestion because I am looking at the clock and I want to make sure that we are out of here before the dinner break at 6:30 p.m. Mr. Hooser, I know you had some interest in that.

Councilmember Hooser: So the open session matter you are referring to is the open discussion of the general topic of the Executive Session dealing the grading and grubbing and the property tax issue?

Council Chair Rapozo: Correct.

Councilmember Hooser: The Committee of the Whole would be next week Thursday?

Council Chair Rapozo: Yes, that is right. It will be next Thursday.

Councilmember Hooser: Okay. I am acceptable to that.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I just want to do whatever we can here and let B.C. leave.

Council Chair Rapozo: If we do that, B.C. can leave.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: So you are referring to the agricultural investigation.

Council Chair Rapozo: Correct.

Councilmember Yukimura: So you are saying to do the Executive Session today and refer the open session to Committee.

Council Chair Rapozo: Next week.

Councilmember Yukimura: I am okay with that. Thank you.

Council Chair Rapozo: Okay. Let us do that then. Can we proceed to the second reading Bills, please?

BILLS FOR SECOND READING:

Bill No. 2563 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-782, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Moana Kai and Pono Kai Seawall – \$1,600,000*): Councilmember Kagawa moved for adoption of Bill No. 2563, on second

and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Kagawa, Kaneshiro, Yukimura,	
	Rapozo	TOTAL – 5,
AGAINST ADOPTION:	Hooser	TOTAL – 1,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you. Next item, please.

Bill No. 2564 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE HOUSING AND COMMUNITY DEVELOPMENT REVOLVING FUND (*Housing Agency, Special Projects – \$35,877*): Councilmember Kagawa moved for adoption of Bill No. 2564, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro,	
	Rapozo	TOTAL – 5,
AGAINST ADOPTION:	Yukimura	TOTAL – 1,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you. Can we go to our last bill for second reading, please?

Bill No. 2565 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Real Property Assessment Software – \$100,000*): Councilmember Kagawa moved for adoption of Bill No. 2565, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Chair, I am not going to be supporting this measure and I understand that it is a useful tool and that other communities are using the tool. I also understand that pictometry is used on a regular basis, but I am very concerned about the ongoing erosion of privacy. I want to commend Deputy County Attorney Nick Courson for providing this opinion here. Just briefly, the question is are there privacy issues...

Council Chair Rapozo: Hang on— you cannot...

Councilmember Hooser: I cannot read this?

Council Chair Rapozo: No, you cannot.

Councilmember Hooser: Okay, I will not read it then. But I will say that the County Attorney's Office acknowledges that it is not settled law, that there are valid concerns. I appreciate that. People say it is legal. We all know about preemption and not settled law.

Council Chair Rapozo: Mr. Hooser, I would entertain that opinion being made public if you would feel comfortable.

Councilmember Hooser: Yes, we will do that. That way we do not cause any...

Council Chair Rapozo: Yes. Mauna Kea almost jumped to his knees on the table. I appreciate your understanding that...

Councilmember Hooser: No, it is perfectly fine. I will ask for it to be released and it will be released later. Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: I am planning to vote on this, but I did not get to read or fully understand the opinion, with respect to multiple year contracts and I just want assurance from the County Attorney that we can do this.

Council Chair Rapozo: I think I can help you, Councilmember Yukimura. It was not from the opinion; it was from the procurement office, Mr. Barreira. That is not confidential and he did assure us or in the memo anyway that it was perfectly compliant with the procurement law.

Councilmember Yukimura: Okay. Very good. Thank you.

Council Chair Rapozo: That was not an attorney issue; that was a Finance Department issue.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Mr. Kagawa.

Councilmember Kagawa: I think it is our job as County administration to find the information needed to tax fairly, and to find those that are not properly reporting buildings or structures on their property and to do the necessary work to collect what is due to the taxpayers. I will support this measure. I think technology has its place, especially in these types of areas. Without technology, some places are basically inaccessible to our Real Property Tax Division, and using this type of technology allows us to fairly do our job and do it fairly for all of our taxpayers. While there are some issues, I will gladly read the opinion, but I think more importantly is that we need to be able to do our job fairly and get the information that we need to tax our citizens fairly. Thank you.

Council Chair Rapozo: Thank you. Mr. Chock.

Councilmember Chock: I will be supporting this as well. While I agree that we should always be discerning people's privacy, I think that this in particular for me is not much of an issue, as I think that there are things out there

publically that are probably more invasive that anyone can access. I am supportive. I think it will help us in our efficiency and I think that we need it. Thank you.

Council Chair Rapozo: Thank you. Mr. Kaneshiro.

Councilmember Kaneshiro: I, too, am in support of it. We heard the benefits of having it and how the Real Property Tax Division will be able to use it efficiently. You do not need to run out to a property. You can look at this Geographic Information System (GIS) map on your computer and find the property without having to grab your keys, drive out there, and drive back, so it is a timesaver. Aerial photos are used all the time and it is a onetime shot of a property. It is not a twenty-four (24) hour monitoring of your property or anything. You see people use Google Maps and a lot of other aerial technology, so I am comfortable with it. I think it will be a huge benefit to the Real Property Tax Department.

Council Chair Rapozo: I will also be supporting it. I think pictometry is a great tool. I do want to echo Mr. Hooser's comments about the opinion from Mr. Courson that it was easy to read and very informative. So without going into detail, I just want to say thank you. It makes it so much easier for us. Councilmember Yukimura.

Councilmember Yukimura: I want to commend the Real Property Division and Finance Department because I think they have really tried to be resourceful in a time of tight budget. I believe this will save us money.

Council Chair Rapozo: With that, roll call.

The motion for adoption of Bill No. 2565, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Kagawa, Kaneshiro, Yukimura,	
	Rapozo	TOTAL – 5,
AGAINST ADOPTION:	Hooser	TOTAL – 1,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Can we go to C 2015-42?

There being no objections, C 2015-42 was taken out of the order.

COMMUNICATIONS:

C 2015-42 Communication (12/29/2014) from Council Chair Rapozo, requesting the presence of the Managing Director and County Attorney, to provide the Council with an update on the Administration's fact finding / investigation and plan to address matters pertaining to the agricultural dedication process and the grading, grubbing, and stockpiling process: Councilmember Kagawa moved to refer C 2015-42 to the January 22, 2015 Committee of the Whole Meeting, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1 (*Councilmember Kuali'i was excused*).

Council Chair Rapozo: With that, this portion of the meeting will be adjourned. We only have the Executive Session item. Thank you very much.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 5:17 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ricky Watanabe', with a stylized, cursive-like script.

RICKY WATANABE
County Clerk

:cy

(January 14, 2015)

FLOOR AMENDMENT

Resolution No. 2015-09, Requesting The Legislature Of The State Of Hawai'i To Amend Chapter 92, Hawai'i Revised Statutes, To Allow Members Of A County Council To Jointly Attend Community Meetings

Introduced by: JOANN A. YUKIMURA

Amend Resolution No. 2015-09 by amending "Exhibit A," Section 92-2.5 (i), Hawai'i Revised Statutes, to read as follows:

"(i) Members of a county council may jointly attend and speak at a community, educational, or informational meeting or presentation of another entity, including a legislative hearing, convention, seminar, conference, forum, debate, or community association meeting, notwithstanding subsection (e)[.], provided that the public is invited to attend the meeting or presentation through print or broadcast news media outlets or through methods of communication that clearly demonstrate an intention that the meeting or presentation will be an event that is open to the public."

(Material to be deleted is bracketed. New material is underscored.)

(January 14, 2015)

FLOOR AMENDMENT #1

Proposed Draft Bill (No. 2571), Relating to Establishing Procedures, Development Plans, and Future Growth Areas for the Līhu'e Planning District

Introduced By: MASON K. CHOCK (By Request)

1. Amend Proposed Draft Bill (No. 2571) by amending SECTION 2, SECTION 3, SECTION 4, and SECTION 5 in its entirety to read as follows:

“SECTION 2. Chapter 10, Article 5, Section 10-5 “Līhu'e Development Plan” of the Kaua'i County Code 1987, as amended, is hereby repealed and amended to read as follows:

“Article 5. Līhu'e Community Plan

Section 10-5.1 Title and Purpose.

(a) This Article shall be known and may be cited as the “Līhu'e Community Plan Ordinance.” It is adopted:

(1) To implement the intent and purpose of the adopted General Plan and to amend or refine certain portions of the General Plan which are found to be necessary in order to recognize more detailed information and more precise community goals and objectives.

(b) Nature of the Līhu'e Community Plan Ordinance. This Article provides recommendations and policies to direct future development and capital improvements in the Līhu'e Planning District, whose boundary stretches from the Wailua River (North), including Kīpū and Kīpū Kai; and from Wai'ale'ale mauka to the ocean.

(c) The administrative guidelines of this Article are based on the report entitled “Līhu'e Community Plan”, whose major components include:

- (1) Proposed Līhu'e Community Plan Land Use Map
- (2) Proposed Urban Edge Boundary for Līhu'e District
- (3) Proposed Special Planning Areas for the Līhu'e District
- (4) Future Roadways and Parking in the Līhu'e District
- (5) Policies for Līhu'e District Communities
- (6) Implementation and Monitoring

Section 10-5.2 Vision and Goals

The vision and goals for the region as a whole referred to in this Article, shall be known as the Lihue Planning District, and its communities, which include Līhu'e Town and Civic Center, Greater Līhu'e and Kapaia, Hanamā'ulu, [Puhi-Pū'ali-Nuhou] Puhi-Pū'ali-Nuhou, Nāwiliwili-Niumalu-Kalapakī, Kīpū, and Kālepa, are described as follows:

(a) Vision for the Līhu'e Planning District. The Līhu'e District shall be a place with walkable, compact communities, each distinct yet connected, and each

with its own unique identity and sense of place. Green, open spaces between communities serve as visual and physical buffers and evoke Kaua'i's rural essence. Līhu'e Town serves as a destination and gathering place for the island, with a vibrant Town Core and a desirable mix of uses and attractions for residents and visitors.

Section 10-5.3. Implementation of the Līhu'e Community Plan

The Līhu'e Community Plan shall serve as a guide for all development within the Līhu'e Planning District.

The Planning Department shall develop an outreach program to work with existing community organizations and interested individuals to implement the Līhu'e Community Plan and shall report on the progress made towards implementation, as well as the monitoring of community indicators, to the Planning Commission on an annual basis."

SECTION [4] 3. Severability. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION [5] 4. Material to be deleted is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring need not be included.

SECTION [6] 5. This Ordinance shall take effect upon its approval."

(Material to be deleted is bracketed. New material is underscored.)

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